

ESTTA Tracking number: **ESTTA1283523**

Filing date: **05/08/2023**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner information

| | | | |
|---------|--|-------------|----------|
| Name | Seqirus, Inc. | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 475 GREEN OAKS PARKWAY HOLLY SPRINGS, NC 27540 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | CRAIG S. MENDE FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 WEST 42ND STREET, 17TH FLOOR NEW YORK, NY 10036 UNITED STATES Primary email: cmende@fzlz.com Secondary email(s): nsabarra@fzlz.com, ttabfiling@fzlz.com 212-813-5900 | | |
| Docket no. | SEQS 2305654 | | |

Registration subject to cancellation

| | | | |
|------------------|--|-------------------|------------|
| Registration no. | 5249506 | Registration date | 07/25/2017 |
| Register | Principal | | |
| Registrant | GLOBELA PHARMA LLC 5509 BOULEVARD EAST #2 WEST NEW YORK, NJ 07093 UNITED STATES | | |

Goods/services subject to cancellation

| |
|---|
| Class 005. First Use: Jul 23, 2016 First Use In Commerce: Jul 23, 2016 All goods and services in the class are subject to cancellation, namely: Pharmaceutical preparations and substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; Pharmaceutical preparations for the prevention and treatment of ocular disorders or diseases, for the treatment of bacteria-based diseases, and for the treatment of diabetes, and anti - infective preparations, antiviral preparations, antibiotics, antifungal preparations and vaccines |
|---|

Grounds for cancellation

| | |
|-----------------------------|-----------------------------|
| Abandonment | Trademark Act Section 14(3) |
| Mark never used in commerce | Trademark Act Section 14(6) |

| | |
|-------------|----------------------------|
| Attachments | F5143230.pdf(98955 bytes) |
|-------------|----------------------------|

| | |
|-----------|-------|
| Signature | /csm/ |
|-----------|-------|

| | |
|------|----------------|
| Name | Craig S. Mende |
|------|----------------|

| | |
|------|------------|
| Date | 05/08/2023 |
|------|------------|

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SEQIRUS INC.,

Petitioner,

-against-

GLOBELA PHARMA LLC,

Registrant.

PETITION FOR CANCELLATION

Petitioner, Seqirus Inc. (“Petitioner” or “Seqirus”), a corporation organized and existing under the laws of Delaware with an address at 475 Green Oaks Parkway, Holly Springs, North Carolina 27540 (“Petitioner” or “Seqirus”), believes that it will be damaged by the continued registration of the trademark ExcelMed & Design shown below (“Registrant’s Mark”) by Registrant, Globela Pharma LLC (“Registrant”) in Registration No. 5249506 (the “Registration”), and therefore petitions to cancel the same. As grounds for this petition, Petitioner, by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:



FACTS COMMON TO ALL CLAIMS

1. Seqirus, a leader in the biotechnology industry, owns Application Serial Nos. 97510168, 97597194, and 97600281 (together, the “Applications”) to register, respectively, the marks EXZELFLU, EXCELFLU, and EXCELLFLU (together, “Petitioner’s Marks”), all for “Vaccines” in Class 5.

2. On January 27, 2023, the U.S. Patent and Trademark Office (“USPTO”) examiner issued non-final Office Actions refusing to register each of Petitioner’s Marks based on a finding of likelihood of confusion with Registrant’s Mark in the Registration.

3. Upon information and belief, Registrant is a New Jersey limited liability company with an address at 5509 Boulevard East #2, West New York, New Jersey 07093.

4. Registrant secured the Registration for Registrant’s Mark pursuant to Section 1(a) of the Lanham Act, *i.e.*, based on current use in commerce, on July 25, 2017. The Registration covers the following goods, in Class 5 (“Registrant’s Goods”):

Pharmaceutical preparations and substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; Pharmaceutical preparations for the prevention and treatment of ocular disorders or diseases, for the treatment of bacteria-based diseases, and for the treatment of diabetes, and anti - infective preparations, antiviral preparations, antibiotics, antifungal preparations and vaccines.

COUNT I:
ABANDONMENT UNDER 15 U.S.C. § 1064(3)

5. Petitioner repeats and realleges the allegations in Paragraphs 1-4.

6. Upon information and belief, Registrant was dissolved as an entity on December 21, 2022.

7. Upon information and belief, Registrant has ceased selling and is no longer selling any of Registrant’s Goods under Registrant’s Mark in the United States.

8. Upon information and belief, Registrant has no current written marketing or other plans for resumption of sale of Registrant’s Goods under Registrant’s Mark in the future.

9. Upon information and belief, Registrant has discontinued all use in U.S. commerce of the Registrant's Mark in connection with Registrant's Goods with the intention not to resume such use.

10. For the foregoing reasons, Registrant has abandoned Registrant's Mark, and the Registration should be cancelled pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3).

11. The continued registration of Registrant's Mark is causing harm to Petitioner.

COUNT II:
MARK NEVER USED IN COMMERCE UNDER 15 U.S.C. § 1064(6)

12. Petitioner repeats and realleges the allegations in Paragraphs 1-11.

13. The Registration was issued on July 25, 2017 and is more than three years old.

14. Upon information and belief, with respect to at least some of Registrant's Goods, including specifically vaccines, Registrant has never sold such goods in the United States.

15. Upon information and belief, with respect to at least some of Registrant's Goods, including specifically vaccines, Registrant has never sold such goods under Registrant's Mark in the United States.

17. Upon information and belief, Registrant's Mark has never been used in commerce in connection with goods identified in the Registration.

18. For the foregoing reasons, the Registration should be cancelled pursuant to Section 14(e) of the Lanham Act, 15 U.S.C. § 1064(6), enacted as part of the 2020 Trademark Modernization Act.

19. The continued registration of Registrant's Mark is causing harm to Petitioner.

WHEREFORE, Petitioner respectfully requests that this Petition be sustained, and the Registration be cancelled.

Dated: New York, New York
May 8, 2023

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /Craig S. Mende/

Craig S. Mende (cmende@fzlw.com)

151 West 42nd St., 17th Floor

New York, New York 10036

Tel: (212) 813-5900

Fax: (212) 813-5901

Attorneys for Petitioner