

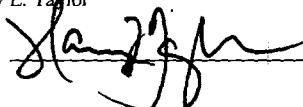
TTAB

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO **BOX TTAB, NO FEE, ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513**, ON JANUARY 13, 2003.

NAME: Nancy L. Taylor

SIGNATURE: _____



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

In the Matter of	
Serial No:	78/131,833
Publication in the Official Gazette:	TM 269
Publication Date:	December 31, 2002
Mark:	RE-LEVE



01-16-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

01-16-2003 11:59:31

Box TTAB, NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

REQUEST FOR SUSPENSION AND EXTENSION OF TIME TO FILE NOTICE OF OPPOSITION DUE TO FILING OF LETTER OF PROTEST

Sir or Madam:

Bayer-Roche L.L.C., a Delaware limited liability company having its principal place of business at 36 Columbia Road, Morristown, New Jersey 07962, by and through its attorneys, hereby requests that the Board **suspend** the time to file a Notice of Opposition in the above-identified matter pursuant to TBMP § 215. Potential opposer Bayer-Roche L.L.C. filed a letter of protest with the PTO on November 5, 2002 (see

attached copy), well over a month before publication of the above-identified mark on December 31, 2002. Under TBMP § 215:

If a potential opposer indicates, in a first or a subsequent request for an extension of time to oppose, that potential opposer filed a letter of protest (not yet determined by the Director) with respect to the subject mark within thirty days after publication, the Board will grant the extension request, if otherwise appropriate, and then suspend the running of the extension period pending determination of the letter of protest.

Potential opposer is not aware at this date of any determination by the PTO on the letter of protest, so the Board should suspend the period in which to oppose the above-identified application pending determination of the letter of protest.

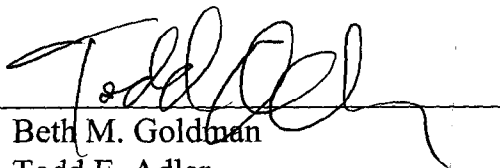
In furtherance of this request, Bayer-Roche L.L.C., by and through its attorneys, hereby requests that the Board grant a sixty (60) day extension of time to file a Notice of Opposition, through March 31, 2003, in the above-identified matter.

This request is being submitted in triplicate as required by 37 C.F.R. § 2.102(d).

Dated: January 13, 2003

Respectfully submitted,

HELLER EHRMAN WHITE & McAULIFFE LLP

By: 
Beth M. Goldman
Todd E. Adler

333 Bush Street
San Francisco, California 94104-2878
(415) 772-6881

November 5, 2002

Via Express Mail

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514
Attention: Ms. Jessie Marshall

Beth M. Goldman
bgoldman@hewm.com
(415) 772-6881
Main (415) 772-6000
Fax (415) 772-6268

24172-0036

Re: Letter of Protest Regarding Serial No. 78/131,833 for RE-LEVE

Dear Ms. Marshall:

We write on behalf of our client Bayer-Roche L.L.C. ("Bayer-Roche") to protest trademark Application Serial Number 78/131,833 for RE-LEVE filed on May 29, 2002 in Class 5 for "analgesic topical gel for medical use." (Please see the enclosed print-out from the PTO web site for further information on the application).

The proposed mark RE-LEVE is merely a misspelling of the word "relieve" – a word which is descriptive of the specified goods. Applicant's goods are an analgesic topical gel, *i.e.*, a gel that "relieves pain." See attached definition of "analgesic," Webster's II New College Dictionary (1995). The specimen of use submitted with the application makes clear the descriptive nature of the mark. The specimen is a container bearing the RE-LEVE device and the legend "A Topical Pain Relieving Gel" (see copy of specimen from application file). The term RE-LEVE is thus used here to denote a product that "relieves" pain. The deliberate misspelling "re-leve" does not change the descriptive character of the term.¹

In addition, the proposed mark RE-LEVE is likely to be confused with Bayer-Roche's ALEVE mark, registered in Class 5 for "anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations" (Reg. No. 1,536,042). The proposed mark RE-LEVE

¹ See 2 McCarthy on Trademarks § 11:31 ("If the misspelling is so phonetically identical to the original descriptive term that buyers will recognize it as descriptive, then the misspelled mark is still 'descriptive.'"); *citing, inter alia, Andrew J. McPartland, Inc. v. Montgomery Ward & Co.*, 164 F.2d 603 (C.C.P.A. 1947). (KWIX-TART held descriptive as phonetic equivalent of "quick start"); *A. & H. Transp., Inc. v. Save Way Stations, Inc.*, 214 Md. 325 (1957) (SAVON GAS held equivalent of descriptive "save on gas"); *No-D-Ka Dentifrice Co. v. S. S. Kresge Co.*, 24 F.2d 726 (D.Mass. 1928) (NO-D-KA held equivalent of descriptive "no decay"); *Steem-Electric Corp. v. Herzfeld-Phillipson Co.*, 118 F.2d 122 (7th Cir. 1940) (STEEM held the equivalent of the descriptive "steam").

Express Mail Article Number: EU570993474US

Date of Mailing: November 5, 2002

Heller Ehrman White & McAuliffe LLP 333 Bush Street San Francisco, CA 94104-2878 www.hewm.com

San Francisco Silicon Valley Los Angeles San Diego Seattle Portland Anchorage New York Washington D.C. Hong Kong Singapore
Affiliated Counsel Offices: Milan Rome Paris Padua Naples

incorporates the last four letters of the ALEVE mark and sets the "LEVE" suffix apart from the rest of the mark with a dash, making the marks visually similar. The marks also sound similar. Finally, the goods for both marks are analgesics and so are nearly identical.

Because the proposed mark is descriptive under 15 U.S.C. § 1052(e) and so resembles the ALEVE mark as to be likely to cause confusion under 15 U.S.C. § 1052(d), we urge you to grant this letter of protest and recommend refusal of App. Ser. No. 78/131,833 for both the Principal and Supplemental Registers.

Thank you very much for your attention to this matter.

Very truly yours,

Heller Ehrman White & McAuliffe LLP

By: 

Beth M. Goldman

Attorneys for Bayer-Roche L.L.C.

Attachments

cc: Fred Carl

675473 v01.SF (#H7501!.DOC)



UNITED STATES POSTAL SERVICE

POST OFFICE TO ADDRESSEE

ORIGIN (POSTAL USE ONLY)

PO ZIP Code 94104	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date In 11/15/04	Time In 11:15 AM	Postage \$ 13.45
Weight 3 lbs. 0 oz.	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee \$
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Int'l Alpha Country Code	COD Fee
	Acceptance Clerk Initials AK	Insurance Fee
	Total Postage & Fees \$ 13.45	

**SEE REVERSE SIDE FOR
SERVICE GUARANTEE AND
INSURANCE COVERAGE LIMITS**

CUSTOMER USE ONLY

METHOD OF PAYMENT
Express Mail Corporate Acct. No.

FROM: (PLEASE PRINT) Beth M. Goldman
333 Bush St
San Francisco CA 94104

PHONE (415) 988-6000

24172-0036

Federal Agency/ Acct. No. or Postal Service Acct. No.

TO: (PLEASE PRINT) Assistant Commissioner
for Trademarks
ATTN: Ms. Jessie Marshall
2900 Crystal Dr
Arlington VA

ZIP+4
2 2 1 2 0 2 3 5 1 4

WAIVER OF SIGNATURE (Postage Only): Additional merchandise insurance is void if waiver of signature is requested. With delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY Weekend Holiday

Customer Signature

FOR PICKUP OR TRACKING CALL 1-800-222-1811

www.usps.com



Customer Copy
Label 11-B May 2001

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.