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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

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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.

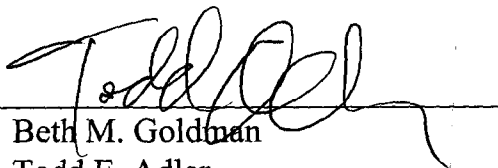
In furtherance of this request, Bayer-Roche L.L.C., by and through its attorneys, hereby requests that the Board grant a sixty (60) day extension of time to file a Notice of Opposition, through March 31, 2003, in the above-identified matter.

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

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(The following text is extremely faint and largely illegible due to low contrast and scan quality. It appears to be a continuation of a letter or document.)

1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

2. Next, it is important to gather relevant information and data. This can be done through research, consultation with experts, or by analyzing existing data sets.

3. Once the information is gathered, the next step is to develop a plan or strategy to address the problem. This plan should outline the steps to be taken and the resources needed.

4. The fourth step is to implement the plan. This involves carrying out the tasks outlined in the plan and monitoring progress as it goes.

5. Finally, it is important to evaluate the results of the implementation. This involves comparing the actual outcomes with the expected outcomes and identifying any areas for improvement.

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1. The first step in the process of creating a new product is to identify a market need. This involves conducting market research to understand the preferences and behaviors of potential customers.

2. Once a market need is identified, the next step is to develop a concept. This involves brainstorming ideas and creating a rough sketch of the product.

3. The third step is to create a prototype. This involves building a small-scale model of the product to test its functionality and appearance.

4. The fourth step is to conduct a feasibility study. This involves evaluating the technical, financial, and market viability of the product.

5. The fifth step is to develop a business plan. This involves outlining the marketing, sales, and financial strategies for the product.

6. The sixth step is to secure funding. This involves seeking investment from venture capitalists, angel investors, or other sources.

7. The seventh step is to manufacture the product. This involves setting up a production line and sourcing materials.

8. The eighth step is to launch the product. This involves marketing the product and distributing it to customers.

9. The ninth step is to monitor the product's performance. This involves tracking sales, customer feedback, and market trends.

10. The tenth step is to iterate and improve the product. This involves making changes based on customer feedback and market trends.

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1. The first part of the document is a title page. It contains the title "THE HISTORY OF THE UNITED STATES OF AMERICA" and the author "BY JAMES MADISON".

2. The second part of the document is a preface. It contains the text "I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration."

3. The third part of the document is the main body of the text. It contains the text "The first part of the document is a title page. It contains the title 'THE HISTORY OF THE UNITED STATES OF AMERICA' and the author 'BY JAMES MADISON'."

4. The fourth part of the document is a conclusion. It contains the text "I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration."

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. Finally, the fifth step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals to determine the effectiveness of the project and identify areas for improvement.

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