

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

In the Matter of Application Serial No. 76/280,484
Published in the *Official Gazette* on March 18, 2003 at TM 546
Trademark: FEMALEV

Bayer-Roche L.L.C.,
Opposer
v.
Jude LaCour,
Applicant.

Opposition No. 91156838

**OPPOSER'S ANSWER TO
COUNTERCLAIMS**

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

OPPOSER'S ANSWER TO COUNTERCLAIMS

Opposer Bayer-Roche L.L.C. ("Opposer") replies to the Counterclaims filed by Applicant Jude LaCour ("Applicant") as follows:

1. As to paragraph 17 of the Counterclaims, Opposer admits that Applicant has alleged counterclaims for cancellation of the registration of Opposer's ALEVE mark. Except as expressly admitted herein, Opposer denies the allegations in paragraph 17 of the Counterclaims.
2. Opposer admits the allegations in paragraph 18 of the Counterclaims.
3. As to paragraph 19 of the Counterclaims, Opposer admits that it is the owner of U.S. Registration No. 1,536,042 in international class 5 for the mark ALEVE

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for “anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations.” Except as expressly admitted herein, Opposer denies the allegations in paragraph 19 of the Counterclaims.

4. As to paragraph 20 of the Counterclaims, Opposer admits that it sells goods under the ALEVE mark that contain the active ingredient naproxen sodium. Except as expressly admitted herein, Opposer denies the allegations in paragraph 20 of the Counterclaims.

5. In response to paragraph 21 of the Counterclaims, Opposer repeats and incorporates by reference its answers to paragraphs 17 through 20 as though fully set forth herein.

6. Opposer denies the allegations in paragraph 22 of the Counterclaims.

7. In response to paragraph 23 of the Counterclaims, Opposer repeats and incorporates by reference its answers to paragraphs 17 through 22 as though fully set forth herein.

8. Opposer denies the allegations in paragraph 24 of the Counterclaims.

AFFIRMATIVE DEFENSES

1. Applicant’s Counterclaims are barred because Opposer’s ALEVE mark is not, and has never been, generic.

2. Applicant’s Counterclaims are barred by the doctrine of laches.

3. Applicant’s Counterclaims are barred by the doctrine of estoppel.

4. Applicant’s Counterclaims are barred by the doctrine of acquiescence.

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5. Applicant's Counterclaims are barred by the doctrine of waiver.
6. Applicant's Counterclaims are barred by the doctrine of unclean hands.

Respectfully submitted,

HELLER EHRMAN WHITE & McAULIFFE LLP

Dated: September 25, 2003

By: 

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09-29-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

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Arlington, Virginia 22202-3514

TRANSMITTAL LETTER

Dear Sir/Madam:

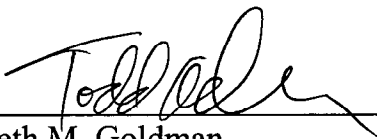
We are attorneys representing Opposer Bayer-Roche L.L.C. Enclosed is an original OPPOSER'S ANSWER TO COUNTERCLAIMS filed by Bayer-Roche L.L.C.

Please address all correspondence to me at the address below. Please stamp the enclosed postcard to evidence your receipt of this document.

Respectfully submitted,

HELLER EHRMAN WHITE & McAULIFFE LLP

Dated: September 25, 2003

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