

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

In the Matter of Application Serial No. 76/517,772
Published in the Official Gazette of January 6, 2004
Atty. Ref.: 0820312.0904

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AstraZeneca AB,

Opposer,

-against-

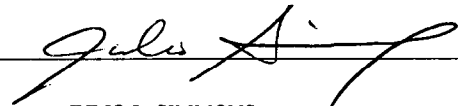
Bimeda, Inc.,

Applicant.
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Opposition No.:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Attn: BOX TTAB FEE

EXPRESS MAIL NO: EV 477962553 US	
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.	
Signature	
Printed Name	JULIO L. SIMMONS
Date	July 6, 2004

NOTICE OF OPPOSITION

AstraZeneca AB, a Swedish corporation, with a place of business located at Västra Mälarehamnen 9, Södertälje, Sweden [hereinafter "Opposer"], believes that it will be damaged by registration of the trademark "DEXIUM", as shown in Application Serial No. 76/517,772, filed May 28, 2003, and hereby opposes same.

As grounds for opposition, it is alleged that:

1. Applicant has filed an application in the United States Patent and Trademark Office, Serial No. 76/517,772, filed May 28, 2003, for registration of the trademark "DEXIUM"

on the Principal Register in respect of "anti-inflammatory analgesic preparations for veterinary use" (Int'l. Class 5), on the basis of an allegation of use of said trademark in commerce.

2. Opposer is a leading producer and distributor of high-quality pharmaceutical products of many kinds.

3. Opposer has registered the trademark "NEXIUM" on the Principal Register of the United States Patent and Trademark Office, Reg. No. 2,483,060, dated August 28, 2001, in respect of "pharmaceutical preparations for the treatment of gastrointestinal diseases" (Int'l. Cl. 5). Said registration is valid and subsisting, and opposer hereby gives notice, in accordance with Trademark Rule 2.122(d)(2), that it will rely on said registration as evidence on its behalf in this proceeding, and that a status copy thereof showing present title will be introduced into evidence during opposer's testimony period.

4. Opposer has made substantial and widespread use of the trademark "NEXIUM" in commerce to identify and distinguish the aforementioned pharmaceutical preparations, and opposer has widely advertised said trademark and goods. Opposer's use of its mark has been continuous from a date prior to the alleged date of first use of applicant's mark until the present date.

5. There is no issue of priority since the filing date of applicant's "DEXIUM" trademark application and its alleged date of first use of said mark are subsequent to the filing date of Opposer's "NEXIUM" trademark registration and are subsequent to the dates of first use of opposer's mark anywhere and in commerce. Also, there is no issue of priority where an applicant's mark is likely to cause confusion, mistake and/or deception with regard to a mark registered in the Patent and Trademark Office.

6. Opposer's pleaded mark possesses a high degree of inherent distinctiveness and represents an extremely valuable asset and symbol of the goodwill of its business by identifying goods which have their source of origin exclusively with opposer, and by distinguishing such goods from those of others.

7. Applicant's alleged trademark "DEXIUM" is confusingly similar to opposer's pleaded mark in sound, appearance and/or commercial impression.

8. The purchasers of applicant's "DEXIUM" goods are likely to believe that opposer has produced, sponsored or in some other way endorsed applicant's goods and the use of the trademark "NEXIUM".

9. Applicant's use and registration of "DEXIUM" as a trademark for pharmaceutical preparations is likely to cause confusion, or to cause mistake, or to deceive with respect to opposer's trademark "NEXIUM".

10. Applicant's alleged trademark is calculated or likely to cause confusion or mistake or deception of purchasers as to the respective marks of the opposer and the applicant, and also as to the source of origin or sponsorship of the goods for which such marks are used, or are intended to be used.

11. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and damage to opposer's business and to the goodwill thereto appertaining as symbolized and recognized by its aforementioned trademark "NEXIUM".

12. Applicant's alleged trademark is a colorable imitation or misappropriation of opposer's trademark "NEXIUM", and will enable applicant to reap where it has not sown by trading on the goodwill of opposer's business as symbolized and recognized by its aforementioned trademark.

13. As a result of the inherently distinctive nature of opposer's trademark "NEXIUM" and the extensive sales and advertising by opposer of pharmaceutical preparations associated with said trademark, opposer's mark became famous in commerce prior to the filing date of the "DEXIUM" trademark application and prior to any use of said mark by the applicant.

14. The use and registration of applicant's alleged mark "DEXIUM" will cause dilution of the distinctive quality of opposer's famous trademark "NEXIUM".

In conclusion, opposer, by its undersigned attorneys, prays that its opposition to Application Serial No. 76/517,772 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to opposer that the Board finds to be necessary and just in the circumstances.

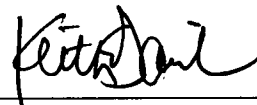
A check for \$300 in payment of the official filing fee is enclosed herewith. The Commissioner is authorized to charge our Deposit Account No. 08-0570, for any other fees required to be paid in connection with this proceeding.

Respectfully submitted,

KIRKPATRICK & LOCKHART LLP

Dated: July 6, 2004

By



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