

ESTTA Tracking number: **ESTTA116525**

Filing date: **12/22/2006**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

|                                       |  |
|---------------------------------------|--|
| Name                                  | Bayer Consumer Care LLC  |
| Granted to Date of previous extension | 12/24/2006   |
| Address                               | 36 Columbia Road<br>Morristown, NJ 07962<br>UNITED STATES  |
| Attorney information                  | Chelseaa E. Larsen<br>Heller Ehrman LLP<br>333 Bush Street<br>San Francisco, CA 94104<br>UNITED STATES<br>sf-trademark@hellerehrman.com Phone:415-772-6000 |

### Applicant Information

|                                |   |                                 |            |
|--------------------------------|---|---------------------------------|------------|
| Application No                 | 78592354  | Publication date                | 06/27/2006 |
| Opposition Filing Date         | 12/22/2006  | Opposition Period Ends          | 12/24/2006 |
| International Registration No. | NONE  | International Registration Date | NONE       |
| Applicant                      | Ovelle Limited<br>Coe's Road<br>Dundalk, County Louth,<br>IRELAND |                                 |            |

### Goods/Services Affected by Opposition

Class 003.

All goods and sevicees in the class are opposed, namely: shampoos; soaps; liquid soap; hair lotion; essential oils for personal use; cosmetics creams; conditioning creams; non-medicated ointments and creams for hydrating, softening and moisturizing skin; non-medicated creams and ointments for topical application to the skin; body lotion; skin cleaners; cleansing wipes

|             |  |
|-------------|--|
| Attachments | Scan001.PDF ( 4 pages )(110362 bytes ) |
| Signature   | /ChelseaaLarsen/                       |
| Name        | Chelseaa E. Larsen                     |
| Date        | 12/22/2006                             |

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

In the Matter of Application Serial No. 78/592,354  
Published in the *Official Gazette* on June 27, 2006  
Trademark: **ELAVE**

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|---------------------------------|--|
| <p>Bayer Consumer Care LLC,</p> |  |
| <p>Opposer</p>                  |  |
| <p>v.</p>                       |  |
| <p>Ovelle Limited,</p>          |  |
| <p>Applicant.</p>               |  |

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**NOTICE OF OPPOSITION**

Bayer Consumer Care LLC (“Opposer”), a Delaware limited liability company having a principal place of business at 36 Columbia Road, Morristown, NJ 07962, believes it will be damaged by registration of the mark ELAVE shown in Serial No. 78/592,354 in International Class 3 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on June 27, 2006 in the *Official Gazette*.

2. Ovelle Limited (“Applicant”), has an application to register the mark ELAVE for “shampoos; soaps; liquid soap; hair lotion; essential oils for personal use; cosmetic creams; conditioning creams; non-medicated ointments and creams for hydrating, softening and moisturizing skin; non-medicated creams and ointments for

topical application to the skin; body lotion; skins cleansers; cleansing wipes” in International Class 3, as evidenced by the publication of such mark in the *Official Gazette* on June 27, 2006.

3. Applicant is, upon information and belief, an Irish company, having an address at Coe’s Road, Dundalk, County Louth, Ireland.

4. Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with pharmaceutical preparations. Opposer is the owner of, among others, an incontestable registration for the trademark ALEVE (United States Registration No. 1,536,042, registered April 25, 1989) for “anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations” in Class 5.

5. There is no issue as to priority. Upon information and belief, Applicant has not used the mark ELAVE on its goods prior to March 22, 2005, as is evidenced by Applicant’s filing of its subject application on an intent-to-use basis on that date. The date of registration and use of the ALEVE mark is thus well before use by Applicant of the ELAVE mark, if any, and Opposer’s ALEVE mark therefore has priority over Applicant’s ELAVE application.

6. Opposer has sold its goods under the mark ALEVE throughout the United States and has developed exceedingly valuable goodwill with respect to the mark ALEVE.

7. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods,

Opposer has gained for its mark ALEVE a most valuable reputation and has created, in the minds of the buying public, an exclusive association between ALEVE and its goods.

8. The trademark proposed for registration by Applicant, namely, ELAVE, is likely to be confused with Opposer's mark, ALEVE, because the marks are similar in appearance, sound and overall commercial impression.

9. Applicant seeks to register ELAVE as a mark in connection with goods that are related to the goods of Opposer and such use so nearly resembles Opposer's use as to be likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

10. If Applicant is permitted to use and register the ELAVE mark for its goods as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark is confusingly similar to Opposer's mark. Persons familiar with Opposer's ALEVE mark would be likely to buy Applicant's ELAVE goods as goods offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's goods marketed under its ELAVE mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its ALEVE mark.

11. The mark ALEVE is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The ALEVE mark became famous prior to the filing of Applicant's intent-to-use application for ELAVE.


12. The trademark proposed for registration by Applicant, namely, ELAVE, is likely to dilute and actually dilutes Opposer's ALEVE mark and reduces the capacity of the famous ALEVE mark to identify the goods of Opposer.

13. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,  
HELLER EHRMAN LLP

Dated: December 22, 2006

By:   
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415-772-6000

Please refer to Our File No.: 24172-0057