

ESTTA Tracking number: **ESTTA186164**

Filing date: **01/11/2008**

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

Proceeding	91180509
Party	Plaintiff Derek Andrew, Inc.
Correspondence Address	David H. Deits Davis Wright Tremaine LLP Suite 22001201 Third Avenue Seattle, WA 98101 UNITED STATES davedeits@dwt.com
Submission	Other Motions/Papers
Filer's Name	David H. Deits
Filer's e-mail	davedeits@dwt.com, michellewebb@dwt.com
Signature	/David H. Deits/
Date	01/11/2008
Attachments	Declaration.pdf (55 pages)(2840123 bytes)

TTAB

I hereby certify that on the date specified below, this correspondence is electronically filed with the United States Trademark and Trial Appeal Board via the ESTTA electronic filing system.

January 11, 2008
Date

s/David H. Deits/
David H. Deits

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

DEREK ANDREW, INC.,)	
)	
Opposer,)	OPPOSITION NOS. 91180509 and
)	91180510
v.)	
)	Serial Nos. 77150066 and 77150073
VITAL PHARMACEUTICALS, INC.,)	
)	Docket No. 66284-100 and 66284-101
Applicant.)	
_____)	

DECLARATION OF DAVID H. DEITS
IN SUPPORT OF OPPOSER'S
MOTION FOR SUSPENSION OF PROCEEDINGS

I, DAVID H. DEITS declare and state as follows:

1. I am a partner in Davis Wright Tremaine LLP, which represents Opposer Derek Andrew, Inc., in the above-captioned opposition. I have personal knowledge of the statements in this declaration except where the context indicates otherwise. I make this declaration in support of Opposer's Motion for Suspension of Proceedings.

2. Attached as Exhibit A hereto is a true and correct copy of the Complaint filed in the litigation captioned *Derek Andrew, Inc. v. Vital Pharmaceuticals, Inc.*, United States District Court, Western District of Washington, Case No. 07-CV-01364-JLR (the "Washington District Court Litigation"), as filed on August 31, 2007.

3. Attached as Exhibit B hereto is a true and correct copy of the Defendants' Answer to Complaint and Affirmative Defenses filed in the Washington District Court Litigation on September 26, 2007.

4. Attached as Exhibit C hereto is a true and correct copy of the Complaint filed in the litigation captioned *Vital Pharmaceuticals, Inc. v. Derek Andrew, Inc.*, United States District Court, Southern District of Florida, Case No. 0:07-CV-61177-JIC (the "Florida District Court Litigation"), as filed on August 20, 2007.

5. Attached as Exhibit D hereto is a true and correct copy of the Order Granting Motion to Dismiss the Florida District Court Litigation, as entered on December 18, 2007.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of January, 2008, at Seattle, Washington.

s/David H. Deits/
David H. Deits

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECLARATION OF DAVID H. DEITS IN SUPPORT OF OPPOSER'S MOTION** was served on Applicant's counsel this 11th day of January, 2008, by United States first-class mail, postage prepaid, in an envelope addressed to:

Erica W. Stump
Vital Pharmaceuticals, Inc.
15751 S.W. 41st Street, Suite 300
Davie, Florida 33331

s/David H. Deits/
David H. Deits

FILED
LODGED
AUG 31 2007 DJ
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C07-1364R

DEREK ANDREW, INC., a Washington
corporation,

Plaintiff,

v.

VITAL PHARMACEUTICALS, INC., a Florida
corporation,

Defendants.

No. C05-1136Z

COMPLAINT FOR TRADEMARK
INFRINGEMENT, AND
VIOLATIONS OF THE LANHAM
ACT AND THE WASHINGTON
CONSUMER PROTECTION ACT

JURY TRIAL DEMAND

Derek Andrew, Inc., ("Derek Andrew" or "Plaintiff"), hereby alleges as follows:

NATURE OF ACTION

1. This is an action for trademark infringement, false designation of origin, unfair competition and unfair business practices arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the Washington Consumer Protection Act, RCW § 19.86 *et seq.*

THE PARTIES

2. Derek Andrew is a Washington corporation having a principal place of business in Bellevue, Washington.



07-CV-01364-CMP

COMPLAINT — 1

SEA 1684652v1 0066284-000096

Davis Wright Tremaine LLP
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3145

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.