

ESTTA Tracking number: **ESTTA522251**

Filing date: **02/19/2013**

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 | Novartis AG |
| Granted to Date of previous extension | 02/17/2013 |
| Address | CH4002 Basel, SWITZERLAND |

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| Attorney information | Craig S. Mende Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES cmende@fzlj.com,ghuron@fzlj.com Phone:2128135900 |
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Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 85638848 | Publication date | 08/21/2012 |
| Opposition Filing Date | 02/19/2013 | Opposition Period Ends | 02/17/2013 |
| Applicant | Alpha Helix Inc. Suite 3206 3750 Las Vegas Blvd Las Vegas, NV 89158 UNITED STATES | | |

Goods/Services Affected by Opposition


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|---|
| Class 005. All goods and services in the class are opposed, namely: Dietary supplements for boosting pre-workout energy; Nutritional supplements for boosting pre-workout energy |
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Grounds for Opposition

| | |
|--------------------------------------|-----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Dilution | Trademark Act section 43(c) |

Marks Cited by Opposer as Basis for Opposition

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3767722 | Application Date | 07/10/2009 |
| Registration Date | 03/30/2010 | Foreign Priority Date | NONE |
| Word Mark | VOLTAREN | | |

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|---------------------|---|
| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: Pharmaceutical preparations, namely, anti-inflammatory preparations and analgesics |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 960282 | Application Date | 04/28/1972 |
| Registration Date | 06/05/1973 | Foreign Priority Date | NONE |
| Word Mark | VOLTAREN | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class U018 (International Class 005). First use: ANTIPHLOGISTIC AND ANTIRHEUMATIC | | |

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| Attachments | 79072252#TMSN.jpeg (1 page)(bytes) Notice of Opposition Novartis AG v. Alpha Helix (VOLTAREN v. VOLTAGEN) (F1175063).PDF (23 pages)(805791 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|------------------|
| Signature | /Craig S. Mende/ |
| Name | Craig S. Mende |
| Date | 02/19/2013 |

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

| | | |
|-------------------|---|-----------------------------|
| Novartis AG, | : | |
| | : | |
| Opposer, | : | Opposition No. |
| | : | |
| - against - | : | NOTICE OF OPPOSITION |
| | : | |
| Alpha Helix Inc., | : | |
| | : | |
| Applicant. | : | |
| | : | |

Opposer Novartis AG, a Swiss corporation with a principal business address of CH 4002, Basel, Switzerland, believes that it would be damaged by the issuance of a registration for the trademark VOLTAGEN as applied for in intent-to-use Application Serial No. 85638848 (the “Application”) filed on May 30, 2012 by Alpha Helix Inc. (“Applicant”), and therefore opposes the same. The specific grounds for this opposition are as follows:

FACTS

A. Opposer and Its Famous VOLTAREN Mark

1. Opposer and its predecessors-in-interest have used the mark VOLTAREN for many years in connection with healthcare products, including anti-inflammatory and pain relief products, throughout the United States.

2. Through significant expenditures of time, effort and money promoting Opposer’s VOLTAREN mark and the associated logo (the “VOLTAREN mark”) and the products sold thereunder, as well as the success of VOLTAREN products in the marketplace over many years,

Opposer's VOLTAREN mark has come to identify Opposer's goods exclusively and uniquely, has become a well-known and famous mark of Opposer, and represents an enormous goodwill.

3. Opposer Novartis A.G. and (under Opposer's authorization) its U.S. subsidiary Novartis Corporation (together, "Novartis") also own federal registrations for the VOLTAREN mark:

- U.S. Reg. No. 3767722 for VOLTAREN & Design for "Pharmaceutical preparations, namely, anti-inflammatory preparations and analgesics" in International Class 5, issued in 2010; and
- U.S. Reg. No. 0960282 for VOLTAREN for "Antiphlogistic and antirheumatic" in International Class 5, issued in 1973.

Print-outs from the United States Patent and Trademark Office's database showing the title and status of these registrations are attached at **Exhibit A**. These registrations are valid, subsisting and in full force and effect, and constitute evidence of the validity of the marks shown therein and of Novartis' exclusive right to use the marks in connection with the goods identified in the registrations.¹

B. Applicant's Application for VOLTAGEN

4. Upon information and belief, Applicant is a Nevada corporation located and doing business at Suite 3206, 3750 Las Vegas Blvd., Las Vegas, NV 89158.

5. Upon information and belief, on May 30, 2012, long after Novartis' VOLTAREN mark was first used in commerce, and long after Novartis' VOLTAREN mark became famous and came to identify the goods of Novartis and its predecessors exclusively, Applicant filed the

¹ U.S. Reg. No. 0960282, owned by Novartis Corporation, has become incontestable and therefore constitutes *conclusive* evidence of the validity of the mark shown therein and of the exclusive right to use the VOLTAREN mark in connection with the goods identified in the registration.

Application to register the mark VOLTAGEN for “Dietary supplements for boosting pre-workout energy; Nutritional supplements for boosting pre-workout energy” in International Class 5.

6. Upon information and belief, Applicant did not begin selling products bearing the VOLTAGEN mark in the United States until the Summer of 2012.

7. Applicant’s VOLTAGEN mark is highly similar to Novartis’ VOLTAREN mark in sight, sound and commercial impression. In fact, the only difference between VOLTAREN and VOLTAGEN is the substitution of one letter (a “G” for an “R”) within the eight letters in each mark.

8. The goods identified in the Application for the VOLTAGEN mark are in the same international class and are related to the healthcare products sold under Novartis’ VOLTAREN mark.

9. Upon information and belief, Applicant’s VOLTAGEN products are being and/or will be sold by the same types of retailers, including pharmacies, at which Novartis’ VOLTAREN products are sold.

10. Applicant has also copied additional indicia associated with the VOLTAREN mark and products, including by use of VOLTAGEN product packaging featuring the color orange, which is similar to the coloring of Novartis’ VOLTAREN packaging.

11. In view of the similarities of the parties’ respective marks, goods and trade channels, Applicant’s use of the VOLTAGEN mark in connection with the goods identified in the Application is likely to cause confusion and/or mistake as to the source or sponsorship of those goods, including by deceiving consumers into believing that Applicant’s goods come from, or are approved by, the maker of products sold under the VOLTAREN mark.

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