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

Proceeding	91254614
Party	Defendant AbbVie AB
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. App. Ser. No. 88/640,320)	
)	Opposition No. 91254614
Mark: VYALEV)	
_____)	
BAYER HEALTHCARE LLC,)	
)	
Opposer,)	
)	
v.)	
)	
ABBVIE AB,)	
)	
Applicant.)	

ANSWER

Applicant AbbVie AB, through its counsel, hereby answers the Notice of Opposition as follows:

1. Opposer and its predecessors have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including products for the treatment of pain, inflammation, fever, and colds.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1 and therefore denies the same.

2. Since long prior to the filing date of the Application, Opposer and its predecessors have continuously used the trademark ALEVE in commerce throughout the United States in connection with the advertising, promotion and sale of products for the treatment of pain, inflammation, fever and colds.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2 and therefore denies the same.

3. Opposer owns the trademark registrations shown below, all comprised of its ALEVE Trademark:

MARK	REG. NO.	REG. DATE	GOODS AND SERVICES
ALEVE	1,536,042	April 25, 1989	Anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations in Class 5
ALEVE	3,287,780	September 4, 2007	Pharmaceutical antitussive-cold preparations; Preparations for treating colds in Class 5
ALEVE-D	3,719,030	December 1, 2009	Antitussive-cold preparations; preparations for treating colds in Class 5
ALEVE	4,459,303	December 31, 2013	Healthcare information services on pain relief, namely providing an online resource of information on joint, muscle and back pain, headache pain and osteoarthritis, including treatment options and tips in Class 44
ALEVE	5,279,528	September 5, 2017	Electrical stimulation apparatus for nerves for therapeutic purposes in Class 10

ANSWER: Applicant admits that Opposer is the currently listed owner of the foregoing trademark registrations in the online records of the U.S. Patent and Trademark Office. Applicant lacks knowledge or information sufficient to form a belief about the truth of any other allegations in Paragraph 3 and therefore denies the same.

4. By virtue of Opposer's and its predecessors' extensive sales, advertising and promotion of pain, inflammation, fever, and cold relief products under its ALEVE trademark, Opposer and its predecessors have built up and Opposer now owns valuable goodwill symbolized by its ALEVE trademark.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4 and therefore denies the same.

5. By virtue of the aforesaid extensive sales, advertising and promotion, the ALEVE trademark is famous among the general consuming public of the United States.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5 and therefore denies the same.

6. Applicant applied to register the mark VYALEV for "pharmaceutical preparations and substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic,

respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders” in Class 5.

ANSWER: Admitted.

7. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any basis for claiming rights in the VYALEV trademark before October 3, 2019, the filing date of the Application opposed herein.

ANSWER: Denied.

8. Use of the VYALEV mark identified in the Application in connection with the goods stated therein is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant’s goods in that purchasers are likely to believe that Applicant’s goods are Opposer’s goods, or are in some way legitimately connected with, licensed or approved by Opposer.

ANSWER: Denied.

9. Use of the mark shown in the Application in connection with the goods stated therein is likely to dilute the distinctiveness of Opposer’s famous ALEVE trademark.

ANSWER: Denied.

10. Applicant’s use of the VYALEV mark shown in the Application is without Opposer’s consent or permission.

ANSWER: Admitted that Opposer has not given Applicant consent or permission to use the VYALEV mark shown in the Application, but denied that any such consent or permission is needed.

APPLICANT’S DEFENSES

In further response to the Notice of Opposition, and as additional defenses thereto, Applicant asserts the following affirmative defenses, without admitting any allegations of the Notice of Opposition not otherwise admitted, and without assuming any burden when such burden would otherwise be on Opposer. Applicant reserves the right to assert additional defenses in the event that further discovery, investigation, or analysis indicates that they are proper.

FIRST AFFIRMATIVE DEFENSE

Opposer will not sustain any damage, harm, loss, or detriment if Applicant's mark is registered.

SECOND AFFIRMATIVE DEFENSE

Opposer's Notice fails to state a claim upon which relief can be granted because Applicant's mark does not so resemble Opposer's mark as to be likely to cause confusion or to cause mistake or to deceive.

WHEREFORE, Applicant prays that the Opposition be dismissed in its entirety, and that Application Serial No. 88/640,320 proceed to registration.

Respectfully submitted,

Dated: April 20, 2020


By 

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer is being served upon Phillip Barengolts via e-mail at pbarengolts@pattishall.com on this 20th day of April, 2020.



Brett M. Tolpin
Tolpin & Partners, PC.