



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS

Citation: 2016 TMOB 36
Date of Decision: 2016-02-29

IN THE MATTER OF AN OPPOSITION

| | |
|--------------------------------------|--------------------|
| Ferring Inc. and Ferring B.V. | Opponents |
| and | |
| The Ddrops Company Inc. | Applicant |
| 1,531,117 for FERIDROPS | Application |

I Introduction

[1] The Applicant is a Canadian corporation that develops and markets vitamin and mineral supplements. It has filed an application to register the trade-mark FERIDROPS (the Mark) for use in association with those goods. The application is based upon proposed use.

[2] The Opponent, Ferring B.V., is an international Swiss-based pharmaceutical company. It develops and markets pharmaceutical and natural health products in a variety of medical fields. It is the owner of Canadian trade-mark registration Nos. TMA346,856 and TMA660,178 (the FERRING registrations) for FERRING (the FERRING trade-marks). The particulars of these registrations are attached hereto as Schedule "A".

[3] The Opponent, Ferring Inc. is wholly-owned by Ferring B.V. and it is Ferring B.V.'s licensee in Canada for the FERRING trade-marks, as well as the trade-names FERRING, FERRING PHARMACEUTICALS and FERRING INC. (the FERRING trade-names).

[4] The Opponents have opposed the application for the Mark on the basis of an allegation that there is a likelihood of confusion between the Mark and Ferring B.V.'s FERRING trade-marks and FERRING trade-names, previously registered and/or used or made known in Canada in association with a variety of pharmaceutical products, as well as products which the Opponents assert fall within the field of natural health products.

[5] For the reasons that follow, the opposition is unsuccessful.

II File History

[6] The application for the Mark was filed on June 9, 2011 and advertised for opposition purposes in the *Trade-marks Journal* on January 18, 2012. A statement of opposition was filed against it on June 15, 2012 under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 (the Act). The statement of opposition was subsequently amended on March 24, 2011, with leave of the Registrar.

[7] A counterstatement was filed on September 17, 2012.

[8] The grounds of opposition (as amended) are based upon sections 30(i), 12(1)(d), 16(3)(a), 16(3)(c) and 2 (distinctiveness) of the Act.

[9] In support of the opposition, the Opponents filed the affidavit of Peter Meehan, sworn January 15, 2013 (the Meehan affidavit), which was later adopted wholly by the affidavit of Clayton Soon, sworn April 29, 2013 (the Soon affidavit). The Opponents also filed certified copies of the FERRING registrations. Mr. Soon was cross-examined and the transcript of his cross-examination, exhibits and answers to undertakings and questions taken under advisement have been made of record.

[10] In support of its application, the Applicant filed the affidavit of Chris Temovsky, sworn February 12, 2014 (the Temovsky affidavit), the affidavit of Mary P. Noonan, sworn February 14, 2014 (the Noonan affidavit) and the affidavit of Amandan J. MacNaughton, sworn February 14, 2014 (the MacNaughton affidavit). All three affiants were cross-examined and the transcripts of their cross-examinations, exhibits and answers to undertakings and questions taken under advisement have been made of record.

[11] As additional evidence, the Opponents filed the affidavit of Michael Seckler, sworn June 23, 2014 (the Seckler affidavit). Mr. Seckler was not cross-examined.

[12] The Opponents did not file any reply evidence.

[13] Both parties filed written arguments and were ably represented by counsel at an oral hearing held on November 17, 2015.

III Onus

[14] The applicant in an opposition proceeding bears the legal onus of establishing on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidential burden on opponents to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

IV Evidence

[15] At the outset, I wish to note that the Soon transcript and undertakings were determined to be missing from the record prior to the hearing. The agent for the Applicant provided replacement copies and with the parties' agreement, the replacement copies were made of record.

IV.1 Opponents' Evidence

Seckler Affidavit

[16] Mr. Seckler is the General Manager of Ferring Inc. [para 1]. In paragraph 3 of his affidavit, he explains that on February 12, 2014, Ferring Inc. executed an assignment assigning all right, title and interest in and to a number of trade-names and trade-marks and corresponding applications and registrations, to Ferring B.V. These included the trade-marks FERRING PHARMACEUTICALS, FERRING PHARMACEUTICALS DESIGN (in which FERRING appears in blue lettering within a black rectangular box and the word PHARMACEUTICALS appears in smaller black lettering in a black rectangular box below) and the two FERRING

registrations [para 3]. A copy of the assignment is attached as Exhibit “B” to Mr. Seckler’s affidavit.

[17] In paragraph 6 of his affidavit, Mr. Seckler explains that since the assignment, Ferring Inc. has continued to use the trade-marks and trade-names listed in the assignment in association with their respective goods under license from Ferring B.V. He also states that under the license, Ferring B.V. has direct or indirect control over the character or quality of the goods sold by Ferring Inc. in association with these trade-marks and trade-names.

[18] Based on the information contained in the Seckler, Meehan and Soon affidavits and exhibits, it appears as though Ferring Inc. previously used and/or licensed others to use the FERRING trade-marks and/or trade-names when it owned them and when ownership was later transferred to Ferring B.V., it continued to use the trade-marks and trade-names as a licensee.

[19] I am able to conclude from the evidence of record that the use of the marks would inure to the benefit of the Opponent by virtue of section 50 of the *Trade-marks Act*.

Soon Affidavit

[20] Mr. Soon is the Corporate Affairs Director of Ferring Inc.[para 1]. In paragraph 2 of his affidavit, Mr. Soon states that he has carefully read the Meehan affidavit and reviewed each of the attached exhibits and to the best of his knowledge, information and belief, the contents are true and correct [para 2]. In paragraph 2 of his affidavit, Mr. Soon confirms that he adopts and repeats the contents of the Meehan affidavit and attached exhibits. Mr. Soon was cross-examined on his affidavit and I will review some of the more salient parts of his cross-examination in my discussion of the Meehan affidavit below, since the Meehan affidavit was essentially the focus of his cross-examination.

Meehan Affidavit

[21] Mr. Meehan is the Vice President, Corporate Affairs of Ferring Inc. [para 1].

[22] In paragraphs 2-4 and 7, Mr. Meehan describes Ferring Inc. and Ferring B.V. He explains that Ferring Inc. is a Canadian pharmaceutical company, wholly owned by Ferring B.V., an

international Swiss-based pharmaceutical company that develops and markets pharmaceutical and natural health products in a variety of medical fields [para 2]. According to Mr. Meehan, since 1976, Ferring Inc. and its predecessors and their related companies and licensees have used and continue to use in Canada, the trade-mark FERRING (in word and design form), the trade-names FERRING and FERRING PHARMACEUTICALS and the company name FERRING INC. Mr. Meehan refers to these trade-marks, trade-names and the company name collectively as the “FERRING marks” and I shall do the same throughout my discussion of Mr. Meehan’s evidence [para 5].

[23] According to Mr. Meehan, all products featuring one or more of the FERRING marks are required to comply with defined quality standards and in Canada, these standards were enforced by Ferring Inc. and by Ferring B.V. on behalf of Ferring Inc. [para 5].

[24] In paragraph 8, Mr. Meehan provides a list of products that have been manufactured by Ferring Inc. or one of its affiliates and marketed and sold in Canada by Ferring Inc. or its predecessors. These products are sold under a number of different brand names (for example, OCTOSTIM®, DDAVP®, PENTASA®, DURATOCIN®, PICO-SALAX®, REPRONEX®, MENOPUR®, etc.) and they are indicated for a variety of different purposes such as ovarian stimulation, clearance of the bowel prior to x-ray, examination, endoscopy or surgery, hemophilia, etc. For each product, Mr. Meehan has provided the date from which it was first sold in association with one or more of the FERRING marks. The dates range from 1978 to 2012.

[25] Attached as Exhibit C to Mr. Meehan’s affidavit are photocopies of representative sample packaging and brochures for some of the products identified in paragraph 8 of Mr. Meehan’s affidavit. The samples display one or more of the FERRING marks.

[26] In paragraph 10, Mr. Meehan provides a list of products which are marketed and sold in Canada by Ferring Inc. under license or distribution agreements with third-party manufacturers in association with one or more of the FERRING marks under license from Ferring Inc., which still owned the FERRING marks at the time that Mr. Meehan’s affidavit was sworn. These products are sold under a number of different brand names (for example, BIOGAIA®, B-NATAL®, TUZEN®, VSL #3®, VITAL-Q®, DIVIGEL®, etc.). Many of them are described as being vitamin, probiotic or dietary supplements for various uses, such as for the relief of

digestive problems. For each product, Mr. Meehan has provided the date from which it was first sold in association with one or more of the FERRING marks. The dates range from 2004 to 2012.

[27] Attached as Exhibit D to Mr. Meehan's affidavit are photocopies of representative samples of packaging and brochures for some of the products identified in paragraph 10 of Mr. Meehan's affidavit. The samples display one or more of the FERRING marks.

[28] I will take this opportunity to point out that aside from appearing in the company name "Ferring Inc.", FERRING most often appears as follows on the packaging in Exhibits C and D:



[29] Notably, at both the hearing and in its written argument, the Applicant took issue with this and argued that such use would not constitute use of Ferring B.V.'s registered trade-marks. On the other hand, the agent for the Opponents pointed out that such use was previously considered within the context of a section 45 proceeding between the parties [*Gowling Lafleur Henderson LLP v Ferring B.V.*, 2015 TMOB 18 (CanLII)] and that the hearing officer concluded that it would constitute use of the registered FERRING trade-marks. I see no reason to come to a different conclusion in this case. I also find it reasonable to conclude that FERRING is set apart visually from the surrounding matter, to the extent that it would be perceived as a trade-mark *per se* and thus, I consider the manner in which it is used to constitute use of the registered FERRING trade-marks [*Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 322 at 538 (TMOB); *Canada (Registrar of Trade Marks) v Cie internationale pour l'informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA); and *Gowling Lafleur Henderson LLP v Ferring supra* at para 25].

[30] At the hearing and in its written argument, the Applicant also took issue with the fact that on Ferring Inc.'s product packaging, brochures and stationery for these products, the product "brand name" is prominently featured, while the FERRING trade-marks or trade-names appear in non-prominent positions (for example, on a bottom corner of the packaging in smaller sized

font). The Applicant also pointed out that with the exception of one product (DDAVP®), all of the “brand names” for the pharmaceutical products listed in paragraph 8 (Exhibit C) of the Meehan affidavit are owned by Ferring B.V. or third party entities [Soon transcript, Q’s 121-125]. In addition, the Applicant pointed out that the majority of Ferring Inc.’s pharmaceutical products feature two different company names on the packaging. The Applicant raised similar issues with respect to the natural health products identified in paragraph 10 (Exhibit D) of the Meehan affidavit.

[31] I will address these issues later on in my analysis.

[32] In paragraph 11, Mr. Meehan states that the Opponents’ products are sold in association with the FERRING marks in Canada through pharmacies, by prescription or over/behind the pharmacy counter, through health food stores, clinics of naturopathic doctors and directly to hospitals.

[33] According to Mr. Meehan, since 1995, total sales in Canada of Ferring products in association with one or more of the FERRING marks have been in excess of \$540 million. Mr. Meehan provides an annual breakdown of sales from 1995 to 2012 on pages 7 to 9 of his affidavit [para 11].

[34] In paragraph 12, Mr. Meehan notes that for fiscal 2012, approximately 8% of sales were attributable to dietary supplement products including BIOGAIA®, B-NATAL®, TUZEN®, VSL #3® and VITAL-Q®. Mr. Meehan states that these dietary supplement products are typically sold, without prescription, through pharmacies, health food stores, and naturopathic medicine clinics [para 12]. According to Mr. Meehan, since 2006, sales revenue from the sale of supplement products has been in excess of \$14 million [para 12]. During cross-examination, Mr. Soon confirmed that the Opponents market, advertise and sell these products in the natural medicine field and that they have been selling dietary supplements in Canada since 2006 [Q’s 229, 234 and 345].

[35] Of the Opponents’ five natural health products, only B-NATAL® is a vitamin supplement and it is not currently available for sale. The remainder are various probiotic or

dietary supplements, and none are related to the treatment of iron deficiency [Meehan affidavit, para 10; Soon cross-examination, Q's 227-231; Soon Undertakings, Q 240].

[36] In paragraphs 13 to 15, Mr. Meehan provides information pertaining to the advertising and promotion of the FERRING marks. He states that they have been advertised and promoted in Canada in medical journals, brochures, flyers, product information packages and other consumer communications, as well as through promotional and educational materials and activities such as clinical education meetings, and the distribution of promotional samples to medical professionals (in the case of prescription drugs) and patients/consumers (in the case of non-prescription products) [para 13]. Samples of such advertising are attached as Exhibit E. According to Mr. Meehan, these samples, along with the brochures and product information packages in Exhibits C and D are representative of how the Opponents' pharmaceutical products have been advertised in Canada with the FERRING marks since at least as early as 2000 continuously to the present.

[37] In paragraph 14, Mr. Meehan states that Ferring B.V. has operated a website since 1997 which is accessible to Canadians and which describes the Opponents' products and features the FERRING marks. Representative pages from the website are attached as Exhibit A to Mr. Meehan's affidavit.

[38] In paragraph 15, Mr. Meehan provides advertising and promotional expenditures in Canada for products sold in association with one or more of the FERRING marks. According to Mr. Meehan, such expenditures have been in excess of \$71 million since 1995. An annual breakdown of these expenditures is provided in a table which appears in paragraph 15 of his affidavit.

IV.2 Applicant's Evidence

Temovsky Affidavit

[39] Mr. Temovsky is the President and General Manager of the Applicant [para 1]. According to Mr. Temovsky, the Applicant is a Canadian corporation that develops and markets vitamin D and mineral supplements within the field of dietary supplements and natural health products [para 4].

[40] In paragraphs 5 to 7, Mr. Temovsky provides some background information regarding vitamins and minerals in general as well as some information regarding the products which the Applicant currently offers in association with its trade-marks Ddrops, Ddrops Booster, Baby Ddrops and Kids Ddrops. Images of each of its Ddrops products are shown in paragraph 7. The products are described as being a liquid vitamin D supplement in drop form and the Applicant's trade-marks can be seen on the products, as well as on their packaging.

[41] In paragraph 8 Mr. Temovsky explains that the Applicant's various Ddrops products can be purchased across Canada without a prescription through ordinary retail channels such as Shoppers Drug Mart, Pharmaprix, Rexall PharmaPlus, Metro grocery stores and others, and in independent health food stores. During cross-examination, Mr. Temovsky described the Applicant's target consumer as "mom", as she is an important decision maker who would typically purchase such products for the family [Q's 116-132].

[42] According to Mr. Temovsky, many hundreds of thousands of bottles of the Applicant's Ddrops brand supplements have been sold in Canada since their introduction, amounting to tens of millions of dollars' worth of sales [para 10]. Mr. Temovsky did not provide specific sales figures on the basis that he considers them to be confidential [para 11]. During cross-examination, Mr. Temovsky confirmed that he was comfortable with a figure of "over a million" for each of the years 2011, 2012 and 2013 [Q's 237-244]. I note that it is unclear what portion of the sales would have been attributable to sales by the Applicant's licensee. In my view, this is a relevant consideration, as very little information has been provided regarding the activities of the licensee, as further discussed below.

[43] In paragraph 12, Mr. Temovsky states that the Applicant and its licensee use the DDROPS trade-mark and the following marks: DDROPS & design (TMA801,513); DDROPS TO GO & Design (TMA801,528); BABY DDROPS POUR BEBE & design (TMA801,888); KIDS DDROPS & Design (TMA801,498); DDROPS BOOSTER & Design (TMA801,497); and DDROPS TO GO (TMA801,501). Mr. Temovsky was questioned about the Applicant's licensee during cross-examination and he did not appear to be very knowledgeable about it [Q's 41, 45, 48, 57, 49-55, 59 and 124-126]. Mr. Temovsky was not even able to answer a question about how the Applicant's licensee had used the trade-mark DDROPS in Canada [Q 57] and he was

unable to speak to the existence of any license agreement [Q 58]. Mr. Temovsky also refused to answer questions regarding contract manufacturers which the Applicant has used in the past to manufacture DDROPS products, including a question regarding whether contract manufacturers had ever shipped DDROPS products directly to Canadian retailers [Q's 85-93].

[44] In paragraph 13, Mr. Temovsky states that the Applicant and its licensee have expended more than \$400,000 on the promotion of the Ddrops brand since its introduction in 2007. Examples of how the brand is promoted are provided in paragraphs 14-19 and in Exhibits 1 to 6. Notably, during cross-examination, Mr. Temovsky admitted that the \$400,000 in advertising expenditures included advertising in the United States, Canada and the United Kingdom [Q's 113-115]. He also stated that he does not know whether the expenditures include expenditures on behalf of the Applicant's licensee and he was unable to recall whether the Applicant's licensee had been involved in the promotional and advertising activities referred to in paragraphs 14 to 16 of his affidavit [Q's 42-46].

[45] Some of the Applicant's promotional and advertising activities include: dissemination of brochures; information cards and product inserts at consumer shows, conferences and meetings [Exhibit 1]; print advertisements [Exhibit 2]; retail flyers [Exhibit 3]; exhibitor appearances and distribution of product information at consumer shows, trade shows and conferences; television advertisements (2010); website [Exhibit 4]; Facebook® [Exhibit 5]; and Twitter® [Exhibit 6].

[46] In paragraph 20, Mr. Temovsky makes reference to the Applicant's application for the Mark (FERIDROPS). Mr. Temovsky explains that the product that will be associated with the Mark is currently in development and will be sold as an oral dietary supplement for the treatment of anemia or other iron deficiencies [para 21].

[47] According to Mr. Temovsky, the product will be sold through the same ordinary retail channels in Canada which the Applicant has developed for its Ddrops products [para 21].

[48] Mr. Temovsky indicates that he set out in full detail, the manner in which the Applicant currently markets its Ddrops products [paragraphs 8-19 of his affidavit], because this is exactly how the Applicant will market its products in association with the Mark, in terms of channels of trade, advertising and promotional activities [para 21].

[49] In paragraph 22, Mr. Temovsky explains that the Applicant selected the “FER” component for use in the Mark to suggest the word for the chemical element iron (the symbol Fe on the periodic table of elements) in languages such as French (fer) and Latin (ferrum).

[50] Mr. Temovsky also states that when spoken, “FERIDROPS” may also suggest the idea of “Fairy Drops” to consumers [para 22] and during cross-examination, he stated that the Applicant liked the name because it was linguistically similar to Ddrops and because of the marketing opportunities for the name because of the associated idea of “fairies” [Q’s 190-194]. He further stated that the Mark has a reference to “drops” and a reference to iron and that it is unique in a linguistic sense to give it “campaignability” (presumably because of the addition of the “I” which was intended to create the idea of a fairy) [Q 226].

[51] In paragraph 23, Mr. Temovsky states that he is aware that the use of the component “FER” in the product names or associated trade-marks of dietary supplements or pharmaceuticals containing iron compounds to denote the presence of iron in these products, is very common in the industry. As examples, he states that he is personally aware of the following supplementary products that are marketed in Canada by third parties: FER-IN-SOL ferrous sulfate oral solution (Enfamil); PALAFER iron capsules (Meda AB); FERAMAX poly-saccharide iron capsules (BioSyent Pharma Inc.); and PROFERRIN iron supplement (Medical Futures Inc.).

[52] In paragraphs 26 and 27 of his affidavit, Mr. Temovsky states that as a result of the significant promotion and sales of the Applicant’s Ddrops brand supplements, in conjunction with all of the Applicant’s Ddrops trade-marks, he believes that the Applicant’s Ddrops trade-marks are well-known in Canada as distinctive trade-marks of the Applicant. He further states that in his view, purchasers of the natural health or supplement products which the Applicant intends to sell in association with the FERIDROPS trade-mark (the Mark) would immediately associate these products with the Applicant and view the Mark as another aspect or extension of the Applicant’s well-known Ddrops brand. I will discuss these assertions in more detail later on in my decision.

Noonan Affidavit

[53] Ms. Noonan is a trade-mark searcher employed by the agent for the Applicant's law firm [para 1]. Ms. Noonan conducted a search of the Canadian Trade-marks register to locate any active trade-mark applications and registrations which contain the element "FER" with pharmaceuticals, medical devices, vitamins, dietary supplements or similar goods, while excluding any marks where the element "FER" appeared as a component of a common English dictionary word such as "transfer" or "different" or "prefer", etc. Ms. Noonan's search revealed 132 such entries on the register. A print-out of the results of Ms. Noonan's search, together with print-outs showing the particulars for those results are attached as Exhibit 1 to her affidavit.

[54] Ms. Noonan also conducted a search of the Canadian Trade-marks register for trade-mark applications and registrations included in the aforementioned search where the element "FER" appeared as a prefix. Her search revealed 54 such entries on the register. A print-out of these search results and print-outs showing the particulars for them are attached as Exhibit 2 to her affidavit.

[55] Ms. Noonan also ordered a copy of the file history for the trade-mark PROFERRIN (application No. 1, 393, 012), in respect of which the Opponent withdrew an opposition. Copies of excerpts from the file history are attached as Exhibit 3 to her affidavit.

[56] Notably, Ms. Noonan confirmed on cross-examination that in her searches, she did not distinguish between products used for animals and those used for humans [Q 96]. In addition, she also included in her searches some references that listed goods outside the scope of pharmaceuticals, medical devices, vitamins or dietary supplements, some of which included food products, mouthwash, sunscreen, etc. [Q 81].

[57] I will discuss Ms. Noonan's search results further in my analysis of the surrounding circumstances in this case.

MacNaughton Affidavit

[58] Ms. MacNaughton is a student-at-law employed by the agent for the Applicant's law firm [para 1]. She was asked to review the trade-mark search results attached as Exhibits 1 and 2 to

the Noonan affidavit for the purpose of locating examples of use of some of the trade-marks from the search results in retail stores and on the internet [para 2].

[59] Ms. MacNaughton purchased various dietary supplement products from retail stores in Toronto, Ontario on February 10, 2014 [paras 3 to 7]. Photographs of the products and receipts showing the purchases are attached as Exhibits 1 to 9. Ms. MacNaughton purchased products with the trade-mark FER-IN-SOL at Rexall and Shoppers Drug Mart, FERAMAX at Shoppers Drug Mart, PROFERRIN at Shoppers Drug Mart and PALAFER at Shoppers Drug Mart [paras 4-7]. Each of these products may be generally described as iron supplements.

[60] Ms. MacNaughton also conducted internet searches for retailers offering the following products in Canada: FER-IN-SOL; PALAFER; FERAMAX; PROFERRIN; FERODAN; FERMALAC; and FEROGLOBIN-B-12 [paras 8-12]. Print-outs from the websites and online stores featuring these products are attached as Exhibits 10-19 of Ms. MacNaughton's affidavit. These products also mostly appear to be iron supplements Ms. MacNaughton performed further internet searches to identify uses of the trade-marks: FERAHEME; FERMENTOL; FERODAN; NEO-FER; INFUFER; LIPOFER; SUPPLEFER; TRIFEREXX; FERRLECIT; NUTRIFERON; FERINJECT; VENOFER; MALTOFER; FERRIPROX; FERROCHEL & Design; FERROL; and FERROFORTE in association with dietary supplements or pharmaceutical products [para 15]. Printouts from the various websites showing those marks are attached as Exhibits 20-34 to the MacNaughton affidavit.

[61] During cross-examination, Ms. MacNaughton stated that when she visited the pharmacies to purchase the products listed at paragraphs 3 to 7 of her affidavit, she did not do a full review of the stores to find all products with "FER" in their names. Rather, she only looked for the products which were identified in the Noonan affidavit [Q's 61-62]. However, she admitted that she did not see any other dietary supplements, pharmaceutical products or similar products whose names included the component "FER" [Q 64].

[62] Ms. MacNaughton also admitted during cross-examination that when she visited the online retailers referred to in her affidavit, she did not have personal knowledge as to whether any of those retailers had ever sold products to Canadians or whether any Canadians had ever visited the websites associated with those products [Q's 95-97].

[63] I will discuss Ms. MacNaughton's evidence further in my analysis of the surrounding circumstances of this case.

V Analysis of Grounds of Opposition

V.1 Grounds of Opposition Summarily Dismissed

Non-compliance – Section 30(i)

[64] The Opponents have alleged that the Applicant could not have been satisfied that it was entitled to use the Mark in Canada at the time of filing of the application as the Applicant was aware or should have been aware: i) of the Opponents' prior use and registration of the FERRING trade-marks and the FERRING trade-names; and ii) that the Applicant's use or intended use of the Mark would have the effect of depreciating the value of the goodwill attached to the registered FERRING trade-marks, contrary to section 22 of the Act.

[65] Section 30(i) of the Act merely requires that an Applicant declare in its application that it is satisfied that it is entitled to registration of its trade-mark. Where an applicant has provided the requisite statement, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. This is not an exceptional case and I note that mere knowledge of the existence of an opponent's trade-mark does not in and of itself support an allegation that an applicant could not have been satisfied of its entitlement to use a mark at the time that it filed its application [see *Woot, Inc v WootRestaurants Inc Les Restaurants Woot Inc* 2012 TMOB 197 (CanLII)].

[66] Moreover, even if I were to find a violation of section 22 of the Act to be a valid ground of opposition, the Opponents have failed to adduce sufficient evidence supporting a likelihood of depreciation of goodwill which would show such a violation of section 22 [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006), 49 CPR (4th) 401 (SCC) at paras 46 and 63-68].

[67] Accordingly, the section 30(i) grounds of opposition are dismissed.

V.2 Analysis of Remaining Grounds of Opposition

Non-registrability - Section 12(1)(d)

[68] The Opponents have pleaded that the Mark is not registrable because it is confusing with the registered FERRING trade-marks. the particulars of which are set out in Schedule “A” attached hereto.

[69] The material date to assess a section 12(1)(d) ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[70] The Opponents filed certified copies of the FERRING registrations as evidence and I have exercised my discretion to check the register to confirm that they are extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)].

[71] The Opponents have therefore met their initial burden with respect to this ground and the Applicant must establish on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the FERRING trade-marks.

Test for Confusion

[72] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the goods or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

[73] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal

weight [*Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

Section 6(5)(a) – the inherent distinctiveness and the extent to which the marks have become known

[74] Both of the parties' trade-marks possess some degree of inherent distinctiveness due to being coined words. However, I do not consider them to be equally inherently distinctive.

[75] The Applicant submits that the FERRING trade-marks suggest a connection to the Island Fohr, its inhabitants ("Feringers") and the language spoken by them ("Fering") [Meehan Affidavit, Exhibit A; Soon transcript, Q's 42-45]. Even if the average Canadian were to be knowledgeable about the Island of Fohr, its inhabitants and the language they speak (which is doubtful), FERRING *per se* is still a coined word and I do not consider it to be suggestive or descriptive of its associated goods despite any perceived connection that might arguably exist with the inhabitants of the Island of Fohr and the language that they speak.

[76] The same cannot be said to be true for the Mark, which by Mr. Temovsky's own admission was selected in part because the component FER suggests the word for the chemical element iron (the symbol Fe on the periodic table of elements), and in languages such as French, (*fer*), and Latin (*ferrum*) [Temovsky affidavit, para 22]. Of course, the word DROPS in the mark is suggestive of the form in which the Applicant's vitamin and mineral supplements are administered [Temovsky affidavit, Q 112]. In view of the suggestive nature of the Mark, I consider it to be somewhat less inherently distinctive than the FERRING trade-marks.

[77] A trade-mark may also acquire distinctiveness by means of it becoming known through promotion or use. In this case, the Applicant has not filed any evidence of promotion or use of the Mark. The Temovsky affidavit mainly consists of background information on the Applicant, the nature of its business, the products that it currently markets and offers for sale and what its plans are for the products that will be associated with the Mark.

[78] By contrast, as outlined in more detail above, the Opponents have filed evidence of promotion and use of the FERRING trade-marks. According to Mr. Meehan, Ferring Inc. and its

predecessors, and their related companies and licensees have used the trade-mark FERRING (in word and design form) in Canada in association with the development, marketing and sale of pharmaceutical and natural health products since 1976 [Meehan affidavit, para 5].

[79] Since 1995, total sales in Canada of Ferring products in association with one or more of the FERRING marks have been in excess of \$540 million [para 11]. Mr. Meehan states that for fiscal 2012, approximately 8% of sales were attributable to dietary supplement products including BIOGAIA®, B-NATAL®, TUZEN®, VSL #3® and VITAL-Q®. Since 2006, sales revenue from the sale of supplement products alone has been in excess of \$14 million [para 12]. While supplement products may not be the main focus of the Opponents' business, this is not an insignificant figure.

[80] The Ferring products have been extensively advertised in association with one or more of the FERRING marks in Canada [Meehan affidavit, paras 13 to 15]. In paragraph 15 of his affidavit, Mr. Meehan provides advertising and promotional expenditures in Canada for products sold in association with one or more of the FERRING marks. According to Mr. Meehan, such expenditures have been in excess of \$71 million since 1995 [Meehan affidavit, para 15]. While no breakdown has been provided on a product by product basis, based upon the revenues provided in paragraphs 11 and 12 of the Meehan affidavit, I am prepared to infer that a fair portion of these expenditures would have been attributable to dietary or supplemental products.

[81] In view of the foregoing, I find it reasonable to conclude that the FERRING marks have become fairly well-known in association with pharmaceutical products and that they have also become known, although to a somewhat lesser extent, in association with natural health products.

[82] Overall, I find that this factor, which is a combination of the inherent distinctiveness of the parties' trade-marks and the extent to which they have become known, favours the Opponents.

Section 6(5)(b) – the length of time each has been in use

[83] This factor also favours the Opponents, as the application for the Mark is based upon proposed use and there is no evidence that use of the Mark has commenced in Canada.

Sections 6(5)(c) and (d) – the nature of goods, services or business and trade

[84] When considering sections 6(5)(c) and (d) of the Act, it is the statement of goods in an application for a mark and the statement of goods in an opponent’s registration(s) that governs the assessment of the likelihood of confusion under section 12(1)(d) of the Act [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)]. Those statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. Evidence of the parties' actual trades is useful in this respect [*McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); and *American Optical Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[85] In the present case, the application for the Mark covers “vitamin and mineral supplements”. According to Mr. Temovsky, the Applicant’s supplements are non-prescription products and they are intended to be marketed directly to consumers and sold through ordinary retail outlets such as pharmacies, grocery stores and health food stores [Temovsky affidavit, para 8]. During cross-examination, Mr. Temovsky described the Applicant’s target consumer as being “mom”, who purchases for the whole family [Temovsky transcript, Q’s 116-123].

[86] For the most part, the FERRING registrations cover pharmaceutical preparations and medical devices, which are indicated for illnesses or medical conditions in the fields of reproductive health, urology, gastroenterology, endocrinology, hematology and other specialized areas of medicine. One of them also covers “gastrointestinal medicaments” and I note that at least some of the natural health products sold by Ferring Inc. may be considered to fall within this category of goods (for example, BIOGAIA®, TUZEN® and VSL #3®). Some of Ferring Inc.’s other natural health products appear to fall within the scope of the pharmaceutical

preparations which are covered by the FERRING registrations. Ferring Inc. has also sold at least one vitamin product (B-NATAL®), which could also arguably fall within the scope of the FERRING registrations. However, I note that it is not currently being sold.

[87] Most, but not all, of the pharmaceutical products sold by Ferring Inc. in Canada are prescribed by a physician or veterinarian or would be administered by a doctor or nurse in a clinic setting [Soon transcript Q's 74-95]. In other words, they are not available over the counter. However, its dietary supplement products are typically sold without a prescription through pharmacies, health food stores and naturopathic medicine clinics [Meehan affidavit, para 12].

[88] While they are not the same and are perhaps not intended for the same purposes, I consider the dietary and probiotic supplements which are sold in Canada by Ferring Inc. to be similar in nature to the goods in association with which the Applicant has applied to register the Mark (i.e. vitamin and mineral supplements). The parties' goods may be characterized generally as supplements and they are all in the natural health product field. In addition, although it is not the primary focus for the Opponents, both Ferring Inc. and the Applicant are in the business of marketing and selling natural health care products in Canada. Thus, there is also some overlap in the nature of their respective businesses. There is also overlap in their channels of trade, as the parties' products are sold are intended to be sold through some of the same types of retail outlets (i.e. pharmacies, health food stores, etc.).

Section 6(5)(e) – the degree of resemblance between the trade-marks

[89] In *Masterpiece Inc v Alavida Lifestyles Inc et al* [*supra*], the Supreme Court of Canada clearly indicated that the most important factor amongst those listed under section 6(5) of the Act is often the degree of resemblance between the parties' trade-marks [see also *Beverley Bedding & Upholstery Co v Regal Bedding & Upholstering Ltd* (1980), 47 CPR (2d) 145 (FC), at 149, affirmed (1982), 60 CPR (2d) 70 (FCA)]. If the parties' trade-marks do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion.

[90] It is well-established that when considering the degree of resemblance between trade-marks, the trade-marks must be considered in their totality and it is not correct to lay them side

by side and carefully compare and observe the similarities or differences among their elements. It is also not correct to dissect the marks.

[91] As correctly noted by the Applicant, the parties' marks should not be considered syllable by syllable. Instead, they should be compared as a whole to determine whether FERIDROPS (in association with vitamin and mineral supplements) so resembles FERRING (in association with pharmaceutical products, medical devices and any other dietary and probiotic supplements which are considered to fall within the scope of those registrations) so as to cause confusion for the consumer with an imperfect recollection of the FERRING trade-marks [*Reynolds Presto Products Inc v P.R.S. Mediterranean Ltd*, 2013 FCA 119 at 31].

[92] In *Masterpiece*, the Supreme Court also observed that even though the first word of a trade-mark may be the most important, for the purpose of distinctiveness [*Conde Nast Publications Inc v Union des éditions modernes* (1979), 46 CPR (2d) 183 (FCTD)], the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trade-mark that is particularly striking or unique.

[93] In this case, I am of the view that it is the whole of both parties' trade-marks that is striking or unique. In other words, I do not find that any one part or syllable stands out from others in either of the parties' marks. I agree with the Applicant that there is no reason in this case to determine that the parties' marks should be dissected in such a way so as to conclude that the FER, FERI or FERRI fragments of each is the dominant or striking component so as to give rise to any significant degree of resemblance. Rather, it is the entirety of each of FERIDROPS and FERRING that gives the marks their particular uniqueness or "flavor" [*Jacques Vert Group Limited v YM Inc (Sales)*, 2014 FC 1242 at 47-48].

[94] Despite the fact that the marks have the first three letters in common, they are quite phonetically and visually different. In my view, they also differ significantly in terms of their suggested idea. As previously discussed, the Mark suggests the idea of iron (fer) dispensed in drop form.

[95] Overall, I assess the degree of resemblance between the parties' trade-marks to be relatively low, despite the inclusion of FER at the beginning of the marks.

[96] I therefore find that this factor in the confusion analysis favours the Applicant.

Surrounding Circumstances

State of the Register and Marketplace

[97] As a surrounding circumstance, the Applicant submits that the state of the register evidence (Noonan affidavit) shows that the “FER” portion of the parties’ marks is a common element of trade-marks in Canada for both pharmaceuticals and vitamin and dietary supplements.

[98] The Applicant correctly pointed out that state of the register evidence is relevant if inferences may be made concerning the state of the marketplace [*Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA); and *Hawke & Company Outfitters LLC v Retail Royalty Co*, 2012 FC 1539 at para 44].

[99] The Applicant submits that there are enough “FER”-formative marks on the register in this case for it to be reasonably concluded that such marks have been commonly adopted in both the pharmaceuticals and supplements fields.

[100] The Applicant points out that a trader who uses a mark which incorporates an element common to the trade cannot expect a broad ambit of protection. In addition, the Applicant points out that where a trade-mark adopts an element in common use as a trade-mark, small differences will be sufficient to avert confusion [*Multiplicant Inc v Petit Bateau Valton SA* (1994), 55 CPR (3d) 372 (FCTD) at para 30].

[101] The Applicant submits that the presence of a common element in a number of other trade-marks on the register and in the marketplace causes purchasers to pay more attention to other features of the respective trade-marks to distinguish between them [*Ferring v Apotex Technologies, Inc*, 2013 TMOB 225 at para 122; and *Micro Focus (IP) Limited v Information Builders, Inc* 2014 FC 632 at para 7].

[102] Finally, the Applicant has directed my attention to part of the decision in *Ferring v Apotex Technologies, Inc*, where it was held that there are a large number of registered marks that are comprised of the “FER” component in the pharmaceutical space, that it is common in the

pharmaceutical and health product field and that consumers must be understood to be adept at distinguishing one such mark from another [*Ferring v Apotex Technologies, Inc (supra* at para 122)]. Suffice it to say, this case must be decided on its own facts and evidence.

[103] At paragraph 70 of its written argument (and Schedule B attached thereto), the Applicant identified 26 registered marks where the “FER” element occupies the first or prefix portion of the mark and 33 more where it appears elsewhere in the mark.

[104] At the hearing, the Opponent submitted that only about 20 marks are actually relevant, once we remove those which are for animal use, unrelated goods, have been cancelled, etc. and the Applicant agreed with this narrowing down at the hearing. In my view, that is still a fair number, particularly when one considers it in combination with the state of the marketplace evidence in this case.

[105] Taking into account the contents of both the Noonan and MacNaughton affidavits, at a minimum, I consider it reasonable to infer that consumers have had at least some exposure to FER-formative marks within the specific context of iron supplements, particularly since Ms. MacNaughton was able to purchase four of such products directly at retail stores (FER-IN-SOL, FERAMAX, PROFERRIN and PALAFER) [MacNaughton affidavit, paras 2 to 7; Exhibits 1-9], locate those 4 products, plus at least two others (FERODAN and FEROGLOBIN-B12) [MacNaughton affidavit, paras 8-14; Exhibits 10-19] for sale online in Canada and locate references to a number of others (for example, FERAHEME, NEO-FER, INFUFER, LIPOFER, FERRLECIT, FERINJECT, etc.) on at least some websites which appear to be Canadian. In my view, at the very least, this evidence supports a finding that FER, in the Mark would likely be perceived as being a reference to iron within the context of the Applicant’s goods.

Applicant’s Family of –drops formative trade-marks

[106] As a further surrounding circumstance, the Applicant submits that it is well-recognized that if an applicant owns a family of trade-marks containing an element in common with an applied-for mark, this will be a factor that decreases the likelihood of confusion. That is, where an applicant owns such a family of marks, ordinary consumers familiar with those marks will recognize that the applied-for mark is an addition to the applicant’s family of products [*Vibe*

Ventures LLC v CTV Ltd, 2010 TMOB 166 at para 70; and *Quo Vadis International Ltee v MeadWestvaco Corp*, 2010 TMOB 207 at paras 44-51].

[107] The Applicant submits that such is the case here. More particularly, the Applicant submits that the evidence establishes that the Applicant has a strong reputation in its family of “DROPS”-formative marks, given its extensive sales (tens of millions of dollars, representing hundreds of thousands of individual units sold) and advertising and promotions in association with these trade-marks in Canada since at least 2008.

[108] The Applicant submits that as a result of the significant promotion and sales of its Ddrops brand supplements, in conjunction with its Ddrops trade-marks, the Applicant’s trade-marks are well known in Canada as distinctive trade-marks of the Applicant. Further, the Applicant submits that purchasers of natural health or supplement products which the Applicant intends to sell in association with the Mark would immediately associate those products with the Applicant and view FERIDROPS as another aspect or extension of the Applicant’s well-known Ddrops brand.

[109] First, I note that the Applicant arguably does not have a family of “DROPS”-formative marks. If anything, it has a family of “Ddrops” formative marks.

[110] Second, I note that while Mr. Temovsky does make reference to there being significant promotion and sales of the Applicant’s Ddrops products by the Applicant and its licensee, he refused to provide a breakdown of actual sales figures, citing confidentiality and he was not able to state what portion of the Applicant’s sales and promotional expenditures is attributable to the Applicant and what portion is attributable to its licensee [Temovsky affidavit, para 26].

[111] This is troublesome, as Mr. Temovsky was questioned about the Applicant’s licensee during cross-examination and to say the least, he did not appear to be very knowledgeable about it [Q’s 41, 45, 48-55, 57, 59 and 124-126]. Mr. Temovsky was unable to answer a question about how the Applicant’s licensee had used the trade-mark Ddrops in Canada [Q 57] and he was unable to speak to the existence of any license agreement [Q 58].

[112] I further note that although Mr. Temovsky states that the Applicant and its licensee have expended more than \$400,000 on the promotion of the Ddrops brand since its introduction in

2007, during cross-examination, he admitted that this amount included advertising in the United States, Canada and the United Kingdom [Q's 113-115].

[113] In view of the foregoing, I do not find the Applicant's arguments regarding significant reputation in a family of "DROPS"-formative marks to be persuasive.

Acquired Distinctiveness of Opponent's trade-marks

[114] In its written argument and at the hearing, the Applicant made many submissions regarding the manner in which the Opponent has used the FERRING trade-marks. The Applicant is of the view that the manner in which they are used presents a confusing message to consumers as to the source of the products and ownership of the marks.

[115] The Applicant pointed out that on Ferring Inc.'s product packaging, brochures and stationery for these products, the product "brand name" is prominently featured, while the FERRING trade-marks (or trade-names) appear in non-prominent positions (for example, on a bottom corner of the packaging in smaller sized font). The Applicant also pointed out that with the exception of one product (DDAVP®), all of the "brand names" for the pharmaceutical products listed in paragraph 8 (Exhibit C) of the Meehan affidavit are owned by Ferring B.V. or third party entities [Soon transcript, Q's 121-125]. In addition, the Applicant pointed out that the majority of Ferring Inc.'s pharmaceutical products feature two different company names on the packaging. The Applicant raised similar issues with respect to the natural health products identified in paragraph 10 (Exhibit D) of the Meehan affidavit.

[116] In this regard, the Applicant directed my attention to the recent decision in *Ferring, Inc v Apotex Technologies, Inc*, 2013 TMOB 225, wherein similar evidence was filed and the Registrar found that the manner in which the Opponent had used FERRING on its packaging had the effect of presenting confusing and conflicting messages about product source and ownership and was held to reduce the acquired distinctiveness of the Opponent's FERRING mark [supra at paras 123-125].

[117] Even if I were to come to a similar conclusion in the present case, it would not change the outcome of my decision.

Conclusion on Likelihood of Confusion

[118] As indicated above, section 6(2) of the Act is not concerned with confusion of the marks themselves, but confusion of the goods from one source as being goods from another source.

[119] The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark on the Applicant's vitamin or mineral supplements, at a time when he or she has no more than an imperfect recollection of the FERRING trade-marks in association with goods which are similar in nature and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée, supra* at para 20]. The question posed is whether this individual would be likely to conclude that the Applicant's goods are manufactured or sold by Ferring B.V. either by itself or through its licensee, Ferring Inc. In the present case, I would answer this question in the negative.

[120] In *Masterpiece, supra*, at para 49, the Supreme Court stated that the degree of resemblance between marks, although the last factor listed in section 6(5) of the Act, is often likely to have the greatest effect on the confusion analysis. The other factors become significant only once the marks are found to be identical or very similar. If the marks do not resemble one another, it is unlikely that even a strong finding on the remaining factors set out in section 6(5) of the Act would lead to a likelihood of confusion.

[121] I acknowledge that the FERRING trade-marks are more inherently distinctive than the Mark, in view of the fact that the Mark would likely be perceived as being suggestive of iron (fer) in "drop" form, in the context of the Applicant's good. I also acknowledge that the FERRING trade-marks have been used in Canada for a very long time and that they have become quite well-known, mostly for pharmaceutical products, but also to some extent for natural health products. In addition, I acknowledge that there is some overlap in the nature of the parties' businesses and that the parties use their respective trade-marks on at least some goods which are similar in nature and which are typically sold through the same channels of trade. However, in view of the low degree of resemblance between the Mark and the FERRING trade-marks, as a matter of first impression, I do not consider it likely that a consumer would confuse the source of the parties' goods. Rather, I find that on a balance of probabilities it is not likely

that a consumer would think that the goods associated with the Mark are sold by or sold under license by Ferring B.V./Ferring Inc., or are somehow otherwise affiliated with them.

[122] Accordingly, the section 12(1)(d) ground of opposition is unsuccessful.

Non-Entitlement/ Non-distinctiveness - Sections 2, 16(3)(a) and 16(3)(c)

[123] Although the material dates for the section 16 and distinctiveness grounds of opposition fall earlier than today's date, the different dates do not result in a different outcome. While the Opponents have met their initial burden for each of these grounds, the Applicant has also met its legal onus because there is no likelihood of confusion for the reasons set out in the discussion of the section 12(1)(d) ground. Therefore, the sections 16(3)(a), 16(3)(c) and distinctiveness grounds are also unsuccessful.

VI Disposition

[124] In view of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(8) of the Act.

Lisa Reynolds
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

**TRADE-MARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE: 2015-11-17

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Schedule "A"

| Trade-mark | Registration No. | Goods |
|------------|------------------|--|
| FERRING | TMA346,856 | <p>(1) Pharmaceuticals, namely hormones for treating reproductive and excretory function disorders, X-ray contrast media and gastrointestinal medicaments.</p> <p>(2) Medical devices for administering hormones containing pumps, timers, ampules and structural parts thereof.</p> |
| FERRING | TMA660,178 | <p>(1) Pharmaceutical preparation that modulates fertility and for use in the induction and stimulation of ovulation in humans in injectable form; pharmaceutical preparations for use as a laxative, bowel cleanser and diagnostic aid in powder form.</p> <p>(2) Pharmaceutical preparations and substances in intravenous form for the prevention of premature labour and premature birth.</p> <p>(3) Pharmaceutical preparations for human and animal use in tablet, nasal spray and injectable form which regulate the flow of urine and controls the body's water balance and in injectable form for blood clotting.</p> <p>(4) Pharmaceutical preparation for the treatment of intestinal bowel diseases and certain auto-immune diseases in tablet, enema and suppository form.</p> <p>(5) Brain peptide in injectable form which modulates the pituitary function.</p> <p>(6) Human and animal pharmaceutical preparation used as a vasoconstrictor and in the control of water metabolism in injectable form.</p> <p>(7) Hypothalamic releasing substance for use in human and veterinary medicine as a diagnostic and therapeutic agent.</p> <p>(8) Pharmaceutical preparation consisting of gonadotropin releasing hormones for human and animal use.</p> <p>(9) Pharmaceutical preparations in liquid form for the treatment of hypercalcemia.</p> <p>(10) Pharmaceutical preparation for human and animal use in liquid and nasal spray form which regulates the body's coagulation system.</p> <p>(11) Pharmaceutical preparations, namely a pessary for cervical ripening and induction of labour at term.</p> <p>(12) Pharmaceutical preparations for human use which regulate uterine contractions in injectable form.</p> |