Form TM - 5
TRADE AND MERCHANDISE MARKS ACT, 1958

Notice of Opposition to Application for registration of a Trade Mark, Section 21 (1), Rules 51 (2)

IN THE MATTER of Application No……..(……) in Class ……. in the name of …… and ……., ……

AND

In the matter of Opposition thereto by ……

We, Rallis India Limited, a Company incorporated under the Indian Companies Act, 1913 and having its registered office at …… in the State of ……., hereby give notice of our intention to oppose the Trade Mark advertised under the above number in Class 5 in the Trade Marks Journal No.1143 dated ……. 20 …….. at Page No.1414.

The grounds of opposition are as follows :

1. That we are the well known manufacturers and merchants of Medicinal and Pharmaceutical preparations for past many years.

2. We are carrying on a well established business as manufacturers, marketers and distributors of *interalia* medicinal and pharmaceutical preparations from over more than 3 decades and herbal formulations from last several years.

3. We are marketing and distributing our whole range of products through our wide net work of dealers, chemists and stockists in India and abroad under various Trade Marks. Our products bearing the various trade marks enjoy high reputation and goodwill throughout the country.

4. The applicants have applied for registration of trade mark ..... in class 5 in respect of medicinal and Pharmaceutical preparations which is deceptively similar to our trade mark ..... The adoption by the applicants of the impugned trade mark ..... is dishonest and fraudulent, actuated by malafide intention. It is apparent that the applicants have adopted the trade mark ..... solely with the intention of coming as close as possible to our trade mark ..... The registration of the impugned mark would, therefore, be a negation of the mandate enshrined in the Preamble to the Act which reads as follows;

“An Act to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise”.

The mark applied for registration is neither adapted to distinguish nor capable of distinguishing the applicants' goods.

5. As the trade mark for which registration is being sought by the applicants is deceptively similar to our trade mark ..... and the goods are also identical and/ or of the same description for which our trade mark is applied, registration of the impugned trade mark would be prohibited under Section 12 (1) of the Act.

6. The use of the trade mark ..... would cause confusion and deception in the minds of the medical practitioners, chemists and the consuming public. The prefix RAL used in the mark resembles the prefix of the corporate name of our Company Moreover, the Company is using and is the proprietor of the Trade Marks commencing with the prefix RAL :

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The suffix BEN is phonetically similar to the suffix of our trade mark ..... The overall impression of the Trade Mark for which the applicants are seeking registration is such that it can easily be mistaken and confused with our aforesaid Trade Mark. Alternatively, it is likely to be mistaken as another Trade Mark of our Company.

6. The impugned mark does not qualify for registration under section 9 of the Act as the same is neither distinctive nor capable of distinguishing the goods of the Applicants. The applicants cannot claim any proprietorship in respect of the impugned mark as the same has been copied and adopted by the applicants with a dishonest intention which would cause confusion amongst the medical practitioners, chemists, stockists and the consuming public leading to passing off.

7. That the goods in respect of which the applicants are seeking Registration are the goods of the same and/ or similar description to the goods in respect of which our Trade Mark aforesaid is pending for registration.

8. That the mark in respect of which the Applicants are seeking registration consists of the word ..... and is identical in class 05 in respect of Medicinal and Pharmaceutical preparations which is deceptively similar to our Trade Mark .....

9. The channels of trade of the applicants' goods and the goods in respect of which our Trade Mark will be used would be the same.

10. The applicants are not the proprietors of the mark applied for registration within the meaning of Section 18(1) of the Act.

11. The mark now sought to be registered is not adopted to distinguish the applicants' goods and is also not capable of distinguishing the applicants' goods.

12. The registration of the applicants' mark which forms the subject of the present application, will be contrary to the provisions of Section 9, 11(a), 11(e), 12(1) and 18(1) of the Act.

13. The mark applied for registration was admittedly proposed to be used as on the date of advertisement of the mark and therefore, no hardship will be caused to the Applicants if the application is withdrawn and they give an undertaking not to use the mark in future.

14. The foregoing constitutes sufficient grounds for the exercise of the Registrars' discretion in our favour.

15. For the reasons stated in the preceding paragraphs, we pray:

(a) That the Application No.591620 in class 5 be refused.

(b) We also ask for costs.

(c) Such other relief as may be deemed necessary by the Registrar.

All communications in connection to these proceedings may be sent to the following address in India:-

Address ……..
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To:
The Registrar of Trade Marks,
The Office of the Trade Marks Registry at ……..