

ESTTA Tracking number: **ESTTA19525**

Filing date: **11/18/2004**

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	Apothecary Products, Inc.		
Entity	Corporation	Citizenship	Minnesota
Address	11750 12th Ave South Burnsville, MN 55337-1295 UNITED STATES		

Attorney information	Anna W. Manville Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES amanville@merchant-gould.com, lmerz@merchant-gould.com Phone:(612) 332-5300		
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Applicant Information

Application No	78356209	Publication date	10/19/2004
Opposition Filing Date	11/18/2004	Opposition Period Ends	11/18/2004
Applicant	Adventure Medical Kits, L.L.C. 106 Burndy Road Littleton Industrial Park Littleton, NH 03561 UNITED STATES		

Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: First aid kits; first aid kits for domestic or other non-professional use

Attachments	2004 11 18 Notice of Opposition.pdf (4 pages)
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Signature	/Anna W. Manville/
Name	Anna W. Manville
Date	11/18/2004

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

In the Matter of Application Serial No. 78/356,209
Trademark: EZ CARE
Filed: January 23, 2004
Published in the Official Gazette of October 19, 2004

Apothecary Products, Inc.)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
Adventure Medical Kits, L.L.C)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Apothecary Products, Inc., a corporation organized and existing under the laws of the State of Minnesota, and having its principal place of business at 11750 12th Avenue South Burnsville, Minnesota, 55337-1297 (hereinafter referred to as "Opposer"), believes that it will be damaged by registration of the mark EZ CARE shown in Application Serial No. 78/356,209 published in the Official Gazette of October 19, 2004, and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant seeks to register EZ CARE as a trademark for first aid kits; first aid kits for domestic or other non-professional use in International Class 5.
2. The opposed Application Serial No. 78/356,209 was filed on January 23, 2004, based on an alleged bona fide intention to use the mark in commerce.
3. Apothecary Products, Inc. manufactures, markets and/or sells a variety of products under the EZY-CARE mark, including medical support devices, namely, elbow braces, knee braces, palm/wrist braces, ankle braces, elastic bandages and heel cups. Apothecary Products, Inc. manufactures, markets and sells a variety of products under the EZY INFANT CARE mark,

including healthcare products for children, namely, pacifiers, feeding bottle nipples, oral syringes, medicine droppers, medicine spoons, ear syringes, nasal aspirators, and teething rings.

4. Through extensive use and promotion of the EZY-CARE and EZY INFANT CARE marks, Opposer has built a strong national reputation for high quality products, and the EZY-CARE and EZY INFANT CARE marks have come to symbolize Opposer and its products.

5. Opposer owns U.S. Registration No. 1,898,518, issued June 13, 1995, for the mark EZY-CARE for "medical support devices, namely, elbow braces, knee braces, palm/wrist braces, ankle braces, elastic bandages and heel cups." Opposer's valid, subsisting registration is incontestable pursuant to 15 U.S.C. §1065, thus providing *prima facie* evidence of Opposer's exclusive right to use of the mark in commerce on the goods specified in its registration.

6. Opposer owns U.S. Registration No. 1,636,058, issued February 26, 1991, for the mark EZY INFANT CARE for "healthcare products for children, namely, pacifiers, feeding bottle nipples, oral syringes, medicine droppers, medicine spoons, ear syringes, nasal aspirators and teething rings." Opposer's valid, subsisting registration is incontestable pursuant to 15 U.S.C. §1065, thus providing *prima facie* evidence of Opposer's exclusive right to use of the mark in commerce on the goods specified in its registration.

7. Upon information and belief, the products to be offered by Applicant as set forth in Application Serial No. 78/356,209 are closely related to and may be identical to those in connection with which Opposer has used and is using its marks EZY-CARE and EZY INFANT CARE.

8. Upon information and belief, Applicant's goods would be offered to the same consumers who purchase the goods in connection with which Opposer has used and now uses its EZY-CARE and EZY INFANT CARE marks.

9. Upon information and belief, Applicant has made no use of its claimed mark, EZ CARE, in the United States.

10. Opposer has continuously used its EZY-CARE mark in commerce before the filing date of Application Serial No. 78/356,209.

11. Opposer has continuously used its EZY INFANT CARE mark before the filing date of Application Serial No. 78/356,209.

12. The applied-for mark, EZ CARE, sought to be registered by Applicant, so closely resembles Opposer's marks, EZY-CARE and EZY INFANT CARE, that if Applicant's mark is used in connection with the goods identified in Application Serial No. 78/356,209, it would be likely to cause confusion, mistake, or deception in the relevant trade and among purchasers and potential purchasers, all to Opposer's damage.

13. Potential customers for Applicant's goods are likely to believe that such goods originate with, are sponsored by, or are approved by Opposer, when that is not the fact.

14. Registration of the mark shown in Application Serial No. 78/356,209 would allow Applicant to obtain a *prima facie* exclusive right to use its mark, which would be a further source of damage to Opposer.

15. Applicant is not entitled to the registration sought in the opposed application because the Applicant is not the owner of the mark sought to be registered within the meaning of Section 1 of the Trademark Act of 1946, as amended, and further, is not entitled to the exclusive use of the designation EZ CARE in commerce because of the prior use of confusingly similar marks by Opposer.

16. By virtue of the extensive use and promotion of Opposer's EZY-CARE and EZY INFANT CARE marks, the marks have become famous.

17. The use and registration by Applicant of the claimed mark, EZ CARE, for Applicant's goods is likely to dilute the distinctive quality of Opposer's famous EZY-CARE and EZY INFANT CARE marks, again resulting in damage to Opposer.

18. Registration of the mark shown in Application Serial No. 78/356,209 will result in damage to Opposer under the provisions of the Lanham Act, Sections 2(a), 2(d), and 2(f), 15 U.S.C. §1052(a), (d), and (f), as amended, pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the present opposition be sustained and that the registration sought by Applicant be refused.

Please direct all correspondence to the law firm of Merchant & Gould P.C., P.O. Box 2910, Minneapolis, Minnesota, 55402-9942, Attn: Anna W. Manville.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees to Deposit Account No. 13-2725 of Opposer's counsel

noted below.

The following additional attorneys are authorized to act on behalf of the Opposer in connection with this opposition: Sandra Epp Ryan; Gregory C. Golla; Scott W. Johnston; and John A. Clifford.

Respectfully submitted,

APOTHECARY PRODUCTS, INC.

By its Attorneys,

MERCHANT & GOULD P.C.

Date: November 18, 2004

By Anna W. Manville

Anna W. Manville

MERCHANT & GOULD P.C.

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