

CERTIFICATE OF MAILING

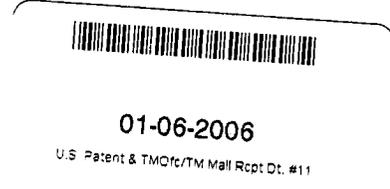
I hereby certify that this correspondence is being deposited with the United States Postal Service in an envelope addressed to: BOX TTAB FEE, Assistant Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on the date set forth below.

By: *D.P.B.* Date: January 4, 2006
Daniel P. Burke

Docket No. 1240-17

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

In the matter of Trademark Application Serial No. 78/601,350
Mark: ULTRA3
Filed: April 4, 2005
Published in the Official Gazette on January 3, 2006
International Class: 42



-----X	:	
NTD Laboratories, Inc.	:	
	:	Opposition No.: _____
Opposer,	:	
	:	
-against-	:	
	:	
Leonard H. Kellner,	:	
	:	
Applicant.	:	
-----X	:	

BOX TTAB FEE
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Dear Sir:

In the matter of the application for registration upon the Principal Register of a trademark for ULTRA3 for use in connection with laboratory analysis of serum samples, in International Class 42, Serial No. 78/601,350, filed April 4, 2005, by Leonard H. Kellner, an individual having an address of 61 Alhambra Road, Massapequa, New York 11758

(hereinafter referred to as "Applicant"); NTD Laboratories, Inc., a New York corporation having an address of 403 Oakwood Road, Huntington, New York 11746 (hereinafter referred to as "Opposer"), believes that it will be damaged by said application and hereby opposes the same.

The grounds for opposition are as follows:

1. Since at least as early as March 1997, Opposer has been, and is now using and promoting the mark ULTRA-SCREEN in connection with laboratory analysis of serum samples, including the performance of pre-natal screening for chromosomal abnormalities, such as Down syndrome. Said use and promotion has been valid and continuous since then and has not been abandoned. Said ULTRA-SCREEN mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in promoting said ULTRA-SCREEN mark.
2. Opposer is the owner of U.S. Trademark Registration No. 2,275,815 filed May 6, 1998 for the mark ULTRA-SCREEN as applied to performing pre-natal Down syndrome screening, in International Class 42.

3. Upon information and belief, Applicant filed an intent-to-use (ITU) application, serial no. 78/601,350 on April 4, 2005 to register ULTRA3 for laboratory analysis of serum samples, in International Class 42.
4. Applicant has begun use of ULTRA3 in commerce for the services referred to in paragraph 3 of this Notice of Opposition.
5. Applicant knew of Opposer's prior use and/or the Registration of Opposer's ULTRA-SCREEN mark when Applicant filed its application for ULTRA3.
6. Upon information and belief, Applicant adopted ULTRA3 in bad faith.
7. Applicant is a former employee of Opposer.
8. Opposer is world-renowned in the field of prenatal screening for chromosomal abnormalities.
9. Applicant has a long history of underhanded and deceptive conduct undeniably intended to create confusion between Applicant and Opposer.

10. Opposer has been conducting business as NTD Laboratories, Inc. in the field of performing prenatal screening for chromosomal abnormalities since at least 1989.
11. In about 1999, Applicant was involved in securing the domain name "NTDLabs.com". A person entering this domain name was directed to a website affiliated with Applicant.
12. Applicant was ultimately compelled to transfer the domain name to Opposer.
13. Opposer's ULTRA-SCREEN trademark and Applicant's ULTRA3 trademark are substantially similar.
14. The services described in Applicant's application serial no. 78/601,350 for Applicant's ULTRA3 mark are closely related to the services provided by the Opposer and are likely to be offered through the same or overlapping channels of trade to the same or overlapping classes of purchasers and users.
15. Applicant's ULTRA3 mark so resembles Opposer's ULTRA-SCREEN mark due to the similarities between Opposer's and Applicant's marks, as to be likely to cause confusion, to cause mistake and/or to deceive within the meaning of §2(d) of the

Trademark Act of 1946, whereby the purchasing public will believe that the Applicant's services emanate from, or in some way are associated or connected with, or sponsored, authorized or warranted by Opposer, all to the detriment of Opposer, and Opposer will be damaged if a registration is granted to Applicant.

16. Likelihood of confusion is enhanced by the fact that the services at issue are identical, and/or substantially similar and the prospective purchasers and/or purchasers of Applicant's and Opposer's services are the same.
17. Applicant's mark so closely resembles Opposer's ULTRA-SCREEN mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that Applicant's mark misdescribes the nature or origin of the services, and purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' decisions to acquire Applicant's services.
18. Applicant's mark so closely resembles Opposer's ULTRA-SCREEN mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's mark points uniquely to Opposer, and purchasers will assume that services offered under Applicant's mark are connected with Opposer.

19. Applicant's mark is deceptive in that it falsely suggests a connection with or approval by the Opposer.

WHEREFORE, Opposer requests that this Opposition be sustained and that the requested registration of Applicant's mark be denied.

U.S.P.T.O. Form 2038 in the amount of \$300.00 is enclosed herewith for the filing of this Opposition proceeding. Any fee deficiency or overpayment can be charged or credited to our Deposit Account No. 07-0130.

Respectfully submitted,

NTD Laboratories, Inc.

Date: January 4, 2006



Daniel P. Burke
Attorney for Opposer
Galgano & Burke, LLP
300 Rabro Drive, Suite 135
Hauppauge, New York 11788
Telephone: 631.582.6161

Enclosures: Notice of Opposition (in Duplicate); Credit Card Form PTO-2038;
Postcard Receipt