

ESTTA Tracking number: **ESTTA64149**

Filing date: **01/30/2006**

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	The American Academy of Neurology
Granted to Date of previous extension	02/18/2006
Address	1080 Montreal Avenue St. Paul, MN 55116-2325 UNITED STATES
Attorney information	Erika S. Koster Oppenheimer, Wolff & Donnelly LLP 45 South Seventh Street Suite 3300 Minneapolis, MN 55402 UNITED STATES ekoster@oppenheimer.com Phone:6126077419

**Applicant Information**

Application No	78321810	Publication date	12/20/2005
Opposition Filing Date	01/30/2006	Opposition Period Ends	02/18/2006
Applicant	Brain Matters Inc. 201 University Boulevard, Suite 200 Denver, CO 80206 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 044. First Use: 2003/10/24 First Use In Commerce: 2003/10/24 All goods and services in the class are opposed, namely: Medical services, namely, brain imaging services, brain diagnostic services
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Attachments	OPPENHEIMER-#2403766-v1-BRAIN_MATTERS__notice_of_opposition.pdf ( 3 pages )
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Signature	/s/
Name	Erika S. Koster
Date	01/30/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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The American Academy of Neurology	)	Opposition No. _____
	)	
Opposer	)	Mark: BRAIN MATTERS
	)	
v.	)	Serial No. 78/321,810
	)	
The Brain Matters Inc.,	)	Filing Date: 10/31/2003
	)	
Applicant	)	Published: 12/20/2005
_____	)	

**NOTICE OF OPPOSITION**

The American Academy of Neurology, a Delaware corporation located at 1080 Montreal Avenue, St. Paul Minnesota 55116-2325, believes it will be damaged by registration of the mark BRAIN MATTERS shown in trademark application Serial No. 78/321,810, filed October 31, 2003, and published in the *Official Gazette* on December 20, 2005, and hereby opposes registration of the mark in Class 44, pursuant to a previously filed extension of time to oppose. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant seeks to register on the Principal Register the designation BRAIN MATTERS as a trademark for “Medical services, namely, brain imaging services, brain diagnostic services” in Class 44.
2. Opposer is the owner of U. S. Registration No. 2,663,399 for the mark THE BRAIN MATTERS in International Class 44 for “Providing information in the field of neurology via the Internet.”
3. Opposer has used the mark THE BRAIN MATTERS continuously in commerce since as least May 1996, for the service identified in Registration No. 2,663,399.
4. Opposer has made extensive use of the THE BRAIN MATTERS mark on its web sites, thebrainmatters.org and <http://www.neurofoundation.org>, and in promotional materials. As a result of such use and promotion, Opposer’s THE BRAIN MATTERS mark has developed and represents valuable goodwill inuring to the benefit of Opposer.
5. Opposer offers information in the field of neurology to patients and their friends and families, and others, including information about neurological tests, in connection with its THE BRAIN MATTERS mark. This information is provided as a public service to raise public

awareness of neurological disorders and their impact on society, and the role that neurologists play in diagnosing and treating neurological disease.

6. The filing date of Opposer's application to register its THE BRAIN MATTERS mark is prior to the filing date of Applicant's application to register the mark now being opposed.

7. Opposer's date of first use of its THE BRAIN MATTERS mark is prior to the filing date of Applicant's application to register the mark now being opposed. Opposer's date of first use of its THE BRAIN MATTERS mark is prior to Applicant's date of first use of the BRAIN MATTERS mark.

8. Applicant's BRAIN MATTERS mark is confusingly and deceptively similar to Opposer's previously used and duly registered THE BRAIN MATTERS mark.

9. Applicant's BRAIN MATTERS mark is nearly identical in sight, sound and commercial impression to Opposer's mark.

10. The potential consumers for Applicant's brain imaging and diagnostic services are potential consumers of Opposer's public information services in the field of neurology. Opposer's information services.

11. Due to the similarity between Applicant's claimed mark BRAIN MATTERS and Opposer's previously used and registered THE BRAIN MATTERS mark, the overlap of consumers, and that Opposer's services include public service information regarding neurological tests such as those offered by Applicant, customers and potential customers are likely to believe that Applicant's services are endorsed, sponsored or approved by Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

12. Registration by Applicant of the mark BRAIN MATTERS for Applicant's services is likely to cause confusion or to cause mistake and deception among purchasers and potential purchasers, both among the general public and among physicians, with Opposer's previously used and duly registered THE BRAIN MATTERS mark, resulting in damage to Opposer.

13. Because of the highly related nature of the services and the similarity of the marks, registration of the BRAIN MATTERS mark by Applicant is likely to cause confusion, mistake or deception that Applicant's services are endorsed, sponsored or approved by Opposer.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that registration of the term BRAIN MATTERS be refused,

Please direct all correspondence to:

Erika S. Koster  
OPPENHEIMER WOLFF & DONNELLY, LLP  
45 South Seventh St, Suite 3300  
Minneapolis, MN 55402

Opposer appoints Erika Koster, Barbara Grahn, Steven Lieske, Barbara Wrigley, Craig Lervick, Rudy Hofmann, and Dena Van de Voort of the firm of Oppenheimer Wolff & Donnelly, LLP, their attorneys to transact all business in the U. S. Patent and Trademark Office relating to this matter with full power of substitution.

Please charge the \$300 filing fee to Deposit Account No. 50-1901, the deposit account of Opposer's counsel noted below.

Respectfully submitted,

THE AMERICAN ACADEMY OF NEUROLOGY

By its Attorneys,

Date: January 30, 2006

/s/  
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