

ESTTA Tracking number: **ESTTA151346**

Filing date: **07/16/2007**

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	Melaleuca, Inc.
Granted to Date of previous extension	07/18/2007
Address	3910 S. Yellowstone Hwy. Idaho Falls, ID 83402 UNITED STATES

Attorney information	H. Dickson Burton TraskBritt 230 South 500 East, Suite 300 Salt Lake City, UT 84102 UNITED STATES trademark@traskbritt.com Phone:801-532-1922
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Applicant Information

Application No	78483597	Publication date	03/20/2007
Opposition Filing Date	07/16/2007	Opposition Period Ends	07/18/2007
Applicant	Rainforest Nutritionals, Inc. 8504 E. Lake Court Raleigh, NC 27613 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary supplements; namely medicated and Non-medicated dietary supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	REST-EZ		
Goods/Services	Dietary Supplements		

Attachments	Notice of Opposition.pdf (3 pages)(92638 bytes)
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Signature	/H. Dickson Burton/
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Name	H. Dickson Burton
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Date	07/16/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/483,597
For the Mark: REST EAZY
Filed: September 14, 2004
Published in the Official Gazette on: March 20, 2007

_____)	
MELALEUCA, INC)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
RAINFOREST NUTRITIONALS, INC.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Melaleuca, Inc. (“Melaleuca”), is a corporation organized and existing under the laws of the State of Idaho, with its principal place of business located at 3910 South Yellowstone Hwy., Idaho Falls, Idaho 83402-6003. Melaleuca believes that it would be damaged by the issuance of a registration for the trademark REST EAZY (“Applicant’s Mark”) as applied for by Applicant Rainforest Nutritionals, Inc. (“RNI”) in Application Serial No. 78/483,597 identified above and hereby opposes the same.

As grounds for its opposition, Melaleuca alleges, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters, as follows:

1. Long before September 14, 2004, the date on which RNI filed its intent-to-use trademark application, Melaleuca began using the mark REST-EZ in interstate commerce in connection with the sale and promotion of dietary supplements. Indeed, the REST-EZ mark was used throughout the United States at least as early as August 2001. The REST-EZ mark has been used on dietary supplements.

2. Melaleuca's REST-EZ mark is inherently distinctive as applied to the REST-EZ dietary supplements.

3. The mark that RNI seeks to register is similar to the REST-EZ mark in sound, appearance, connotation, and commercial impression.

4. Melaleuca has priority of use in the REST-EZ mark. Melaleuca has continuously used the REST-EZ mark in advertising, promoting, and marketing its dietary supplements throughout the United States years prior to the date of the RNI's Application.

5. By virtue of Melaleuca's continuous use in commerce of its REST-EZ mark in connection with such dietary supplements, such supplements have become well and favorably known to the relevant trade and public under the REST-EZ mark.

6. Melaleuca has invested substantial time, effort and expense in extensive promotion throughout the United States of the goods sold under its REST-EZ mark. As a result, considerable goodwill has attached to the mark REST-EZ to Melaleuca's benefit.

7. The mark REST-EZ is emblematic of Melaleuca's reputation for designing and providing high quality products and symbolizes the goodwill of Melaleuca, which is invaluable.

8. The mark that RNI seeks to register will be or is being used for goods that are closely related to the goods offered by Melaleuca in connection with the REST-EZ mark.

9. Applicant's goods would be directed to the same customer segment of the consuming public as Melaleuca's goods.

10. Use of RNI's mark is likely to cause confusion, mistake, and/or deception (under 15 U.S.C. §1052(d)) in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are related to the goods and services of Melaleuca, or in some way are authorized or backed by the name and reputation of Melaleuca, to the damage and injury of the purchasing public and to the damage and injury of Melaleuca.

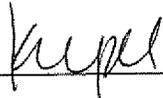
11. Applicant's application and intended use of the REST EAZY mark are without the knowledge, consent or approval of Melaleuca.

12. Based on the foregoing, Melaleuca will be damaged by the registration of the REST EAZY mark on the Principal Register in the United States Patent and Trademark Office.

WHEREFORE, Melaleuca prays that this Notice of Opposition be sustained, that the Application be refused registration, and for such other and further relief as may be deemed to be just and proper.

DATED this 16 day of July 2007.

TRASKBRITT, P.C.
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