

ESTTA Tracking number: **ESTTA158452**

Filing date: **08/22/2007**

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	Elgo, Inc.		
Entity	Corporation	Citizenship	California
Address	23679 Calabasas Road, Suite 216 Calabas, CA 91302 UNITED STATES		

Attorney information	Cynthia R. Moore 794 Los Robles Avenue Palo Alto, CA 94306 UNITED STATES moore@moorepatents.com Phone:650-565-8185		
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Applicant Information

Application No	77090694	Publication date	08/07/2007
Opposition Filing Date	08/22/2007	Opposition Period Ends	09/06/2007
Applicant	SIMPLYWELL, LLC 4242 Farnam Street, Ste. 270 Omaha, NE 68131 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2006/09/00 First Use In Commerce: 2006/09/00
All goods and services in the class are opposed, namely: Counseling in the field of smoking cessation

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78085086	Application Date	09/22/2001
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMPLYQUIT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 034. First use: First Use: 2001/09/15 First Use In Commerce: 2001/09/21 smoker's articles, namely simulated cigarette
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Attachments	78085086#TMSN.gif (1 page)(bytes) notice of opposition.pdf (9 pages)(113154 bytes)
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Signature	/Cynthia R. Moore/
Name	Cynthia R. Moore
Date	08/22/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/090694 Published
in the *Official Gazette* on August 7, 2007

ELGO, INC.,

OPPOSITION NO.:

OPPOSER

vs.

SIMPLYWELL, LLC,

APPLICANT

NOTICE OF OPPOSITION

This Notice of Opposition is filed by Elgo, Inc. (“Opposer”), a corporation organized under the laws of California, having an office at 23679 Calabasas Road, Suite 216, Calabasas, California, 91302.

Opposer believes that it will be damaged by the issuance of registration to SimplyWell, Inc. (“Applicant”), a corporation formed under the laws of Nebraska, having an office at 4242 Farnam Street, Ste. 270 Omaha Nebraska 68131 for the following application for the proposed mark “SimplyQuit”: application serial no. 77/090694, for counseling in the field of smoking cessation in international class 044.

Opposer hereby opposes said application pursuant to Section 13 of the Trademark Act.

GROUND FOR OPPOSITION

As grounds for opposition, Opposer alleges that:

1. Opposer was incorporated on August 25, 2000 with the purpose of manufacturing and selling products to aid in smoking cessation.
2. Opposer received a sales permit on January 1, 2001 to begin sales of its smoking cessation product using the mark “SimplyQuit,” and has been engaged continuously in sales of smoking cessation products to the present time using the mark.
3. Opposer established a website whose address is www.simplyquit.com in January 2001, long before Applicant first began using the name. Opposer is and has been engaged in commerce using the “simplyquit” website and the mark to sell products useful for smoking cessation.
4. Opposer, through its principal, Ely Gold, applied for a trademark on September 22, 2001 (application no. 78/085086), and timely responded to a Notice of Abandonment by filing a petition to revive with the requisite fee and response due. However, due to Office error, the petition was not acted upon and the trademark application was not reinstated and the mark allowed to be registered. Correction of this Office error is pending, and registration is expected. Investigation by Applicant of Opposer’s response to the Notice of Abandonment and of Opposer’s continued use of the mark “SimplyQuit” would have revealed that Opposer had

already applied for registration of the identical mark, and that the identical mark was already in use in commerce by Opposer in the same area of commerce.

5. Opposer has invested considerable sums in advertising to generate consumer awareness of its smoking cessation products and good will toward its business. In particular, Opposer has invested considerable funds to advertise its smoking cessation products using the tradename “SimplyQuit” on the internet, on television, radio, magazines, and in newspapers in the United States and abroad. In addition, Opposer has invested substantial sums of money to manufacture smoking cessation products as well as packaging materials identifying the products by the tradename “SimplyQuit”, and to obtain and maintain a patent on Opposer’s products for smoking cessation.

6. Opposer has generated consumer awareness and goodwill for its smoking cessation products by virtue of their successful use as an aid to achieving smoking cessation and by virtue of Opposer’s reliability and the availability of its products.

7. Applicant is applying for registration of the same trademark “SimplyQuit” which is already in use in commerce by Opposer for the purpose of aiding in smoking cessation.

8. Opposer claims priority for the mark “SimplyQuit” by virtue of having used the mark in commerce long before Applicant filed its intent-to-use trademark application on January 25, 2007, and by virtue of the prior trademark application filed by Ely Gold, a principal of Elgo, Inc.,

on September 22, 2001. Further, Opposer has used the name “SimplyQuit” as a trademark and tradename long before Applicant’s first use of the name.

9. Opposer would be damaged if Applicant’s mark “SimplyQuit” is registered if such registration results in refusal of Opposer’s application for registration of the mark “SimplyQuit”.

10. There is a high likelihood of consumer confusion that the products sold under the mark “SimplyQuit” by Opposer for smoking cessation are somehow related to the services for smoking cessation provided by Applicant under the identical mark “SimplyQuit.”

Count 1

Applicant’s Mark Is Likely to Cause Confusion with Opposer’s Mark

11. The “SimplyQuit” mark, which Applicant seeks to register, is so similar to Opposer’s “SimplyQuit” mark in sight, sound, overall appearance and commercial impression, as to be likely, when used on or in connection with goods and services covered under Applicant’s filing, to cause confusion or to cause mistake or to deceive consumers into believing that the goods and services covered under Applicant’s mark originate from, are sponsored by, or are otherwise authorized by Opposer, when in fact, they are not.

12. The goods and services associated with Applicant’s filing for the “SimplyQuit” mark would be offered to and used by the same customers who would also be in the market for and use the goods and services associated with Opposer’s “SimplyQuit” mark.

13. The goods and services associated with Applicant's filing for the "SimplyQuit" mark are closely related to goods associated with Opposer's "SimplyQuit" Tradename and Trademark.

14. Opposer, since long before Applicant filed its intent-to-use application for the "SimplyQuit" mark filing, has promoted and marketed the goods offered under the "SimplyQuit" tradename and trademark. By reason of such advertising, marketing and promotion, the "SimplyQuit" tradename and trademark now enjoys valuable goodwill and enviable reputation and is a well known mark in the area of smoking cessation.

15. Registration of Applicant's "SimplyQuit" mark filing would be a source of damage to Opposer because consumers are likely to attribute the source, affiliation or sponsorship of Applicant's goods and services to Opposer, and to dilute the quality of Opposer's "SimplyQuit" mark, thereby causing loss, damage and injury to Opposer and the purchasing public.

16. Registration of Applicant's "SimplyQuit" mark filing would be a further source of damage to Opposer because consumers are likely to attribute the source, affiliation or sponsorship of Opposer's goods and services to Applicant, and to dilute the quality of Opposer's "SimplyQuit" mark, thereby causing loss, damage and injury to Opposer and the purchasing public.

17. Registration of Applicant's "SimplyQuit" mark filing would be a source of damage to Opposer because registration would confer upon Applicant statutory presumptions to which

Applicant is not entitled in view of Opposer's priority in regard to its use of "SimplyQuit" as a tradename and trademark.

18. Accordingly, Applicant's application is likely to cause confusion, mistake or to deceive within the meaning of section 2(d) of the Trademark Act, and as such, is not entitled to registration.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer on the merits, that Applicant's Trademark Application Serial No. 77/090694 be rejected and Applicant be denied registration of the mark "SimplyQuit" for the services specified in that application, with prejudice, and without leave to refile.

Opposer hereby submits the required filing fee of \$300.

Please direct all correspondence to the undersigned at the address listed below.

Respectfully submitted,

Date: August 22, 2007

/Cynthia R. Moore/

Cynthia R. Moore

Moore Patents

794 Los Robles Avenue

Palo Alto, CA 94306

(650) 565-8185

moore@moorepatents.com

Attorney for Opposer

CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the foregoing “Notice of Opposition” was filed electronically through the Electronic System for Trademark Trial and Appeals located on the U.S. Patent and Trademark Office’s website <uspto.gov> on this 22nd day of August, 2007.

/Cynthia R. Moore/

Cynthia R. Moore

Attorney for Opposer