

ESTTA Tracking number: **ESTTA348449**

Filing date: **05/19/2010**

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	Evolv Health, LLC
Granted to Date of previous extension	05/19/2010
Address	Galleria Tower Two, 13455 Noel Road 23rd Floor Dallas, TX 75240 UNITED STATES

Attorney information	Charles G. Zug Nelson Mullins Riley & Scarborough, L.L.P. 1320 Main Street, 17th Floor Columbia, SC 29201 UNITED STATES ip@nelsonmullins.com,geordie.zug@nelsonmullins.com,john.mcelwaine@nelsonmullins.com Phone:(803) 799-2000
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**Applicant Information**

Application No	77813512	Publication date	01/19/2010
Opposition Filing Date	05/19/2010	Opposition Period Ends	05/19/2010
Applicant	Absopure Water Company 41605 Ann Arbor Road Plymouth, MI 48170 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: bottled drinking water; flavor enhanced drinking water; and drinking water with vitamins
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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 No.	77678973	Application Date	02/26/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EVO2LV		

Design Mark	
Description of Mark	The mark consists of a black horizontal line above a black letter "e," followed by a black letter "v," a red letter "o," a red subscript number "2," and the letters "l" and "v" in black.
Goods/Services	Class 005. First use: nutraceutical beverages for use as a dietary supplement; nutritional supplements; nutritionally fortified beverages for use as ergogenic aids
Related Proceedings	Opposition No. 91194952
Attachments	77678973#TMSN.jpeg ( 1 page )( bytes ) EV20 - NOO.pdf ( 4 pages )(125882 bytes )

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Charles G. Zug/
Name	Charles G. Zug
Date	05/19/2010

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

Evolv Health, LLC	)	
	)	Opposer,
	)	Opposition No.: _____
v.	)	
	)	Application No. 77/813,512
Absopure Water Company	)	
	)	Mark: EV20 - WATER HAS EVOLVED
	)	
	)	Applicant.
	)	Publication Date: Jan. 19, 2010
	)	
	)	

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**NOTICE OF OPPOSITION**

Evolv Health, LLC ("Opposer"), a limited liability company organized and existing under the laws of the State of Delaware, having its principal offices at Galleria Tower Two, 13455 Noel Road, 23<sup>rd</sup> Floor, Dallas, Texas 75240, and believing that it will be damaged by registration of the above-identified application, hereby opposes Application No. 77/813,512, filed August 26, 2009 in the name of Absopure Water Company ("Applicant"), published for opposition in the *Official Gazette* of January 19, 2010, at Page TM 925, for the mark EV20 - WATER HAS EVOLVED, and reciting the goods: "bottled drinking water; flavor enhanced drinking water; and drinking water with vitamins."

The grounds of Opposition are as follows:

1. Opposer is a limited liability company, duly organized under the laws of the State of Delaware, and having its principal offices at Galleria Tower Two, 13455 Noel Road, 23rd Floor, Dallas, Texas 75240.

2. Opposer is the owner by assignment of, and will rely in this Opposition upon, pending U.S. trademark Application No. 77/678,973, filed February 26, 2009, for the mark EVO2LV (stylized), as depicted below, and currently reciting the goods "nutraceutical beverages for use as a dietary supplement; nutritional supplements; nutritionally fortified beverages for use as ergogenic aids" ("Opposer's Application"):



3. Upon information and belief, Applicant is a Michigan corporation, with address of 41605 Ann Arbor Road, Plymouth, Michigan 48170.

4. Upon information and belief, notwithstanding Opposer's rights in and to its mark, Applicant filed Application No. 77/813,512 on August 26, 2009, to register the alleged mark EV20 - WATER HAS EVOLVED. Said application currently recites the goods: "bottled drinking water; flavor enhanced drinking water; and drinking water with vitamins," and was published for purposes of opposition in the *Official Gazette* of January 19, 2010, at Page TM 925. Opposer had previously obtained extensions of time to oppose Applicant's application up until May 19, 2010.

5. Because Opposer's Application was filed prior in time to Applicant's intent-to-use Application No. 77/813,512, Opposer has priority in this Opposition proceeding.

6. The alleged mark EV20 - WATER HAS EVOLVED depicted in Application No. 77/813,512 so resembles the mark depicted in Opposer's Application, as to be likely, when used on or in connection with the goods recited in Applicant's application, to

cause confusion or mistake or to deceive purchasers, resulting in damage and injury to Opposer.

7. In view of the similarities of the respective marks and the related nature of the goods of the respective parties, there exists a likelihood of confusion under Section 2(d) of the Lanham Act, which will damage Opposer.

WHEREFORE, Opposer requests that the opposition to Application No. 77/813,512 be sustained in favor of Opposer, and that no registration be issued thereon to Applicant.

The filing fees required by 37 C.F.R. 2.6(a)(17) for filing this Notice of Opposition on behalf of Opposer are submitted herewith.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Dated: May 19, 2010

By:   
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*Attorneys for Opposer, Evolv Health, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Absopure Water Company, by causing a copy to be deposited with the U.S. Postal Service on May 19, 2010, via First Class Mail, postage prepaid, to the current attorney of record for Applicant as listed in the Trademark Applications and Registrations Retrieval (TARR) system for Application No. 77/813,512, whose current correspondence address is listed as:

JOHN P. GUENTHER  
DYKEMA GOSSETT PLLC  
39577 WOODWARD AVE STE 300  
BLOOMFIELD HILLS, MI 48304-5086

Dated: May 19, 2010



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Charles G. Zug