

ESTTA Tracking number: **ESTTA381173**

Filing date: **11/30/2010**

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	23andMe, Inc.
Granted to Date of previous extension	12/01/2010
Address	2606 Bayshore Parkway Mountain View, CA 94043 UNITED STATES
Attorney information	Beth M. Goldman Orrick Herrington & Sutcliffe LLP 405 Howard Street San Francisco, CA 94105 UNITED STATES ipprosecutionsf@orrick.com, bwang@orrick.com, kcornuelle@orrick.com, beth.goldman@orrick.com Phone:415-773-5700

Applicant Information

Application No	77832463	Publication date	08/03/2010
Opposition Filing Date	11/30/2010	Opposition Period Ends	12/01/2010
International Registration No.	NONE	International Registration Date	NONE
Applicant	CKM Holdings Inc. Suite 310 3440 Preston Ridge Road Alpharetta, GA 30005 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 001. All goods and services in the class are opposed, namely: Bacillus and other microbes suspended in powdered or liquid form for sanitation, odor control and wastewater treatment applications; Growth stimulant for microbial products used in the degradation of hydrocarbon contaminants; Microbial spill control liquid for bioremediation; Biologically active enzymes and microorganisms that are aimed at sanitising water environments and to treat the activation and optimisation of biological filter systems; Colorimetric surface swab to indicate presence of chemical or biological substance; Nutritive additive to enhance the biological activity of water, soil, seeds and plants for purposes of fertilization and bioremediation of pollutants</p>
<p>Class 005. All goods and services in the class are opposed, namely: Biological preparations for medical purposes; Microbiocides for industrial and institutional manufacturing processes and wastewater applications; Antimicrobial coatings to treat the growth of mold, mildew, bacteria and fungus on various surfaces; Bacterial and bacteriological preparations for medical or veterinary purposes; Bacterial poisons; Bactericides; Bacteriostats for medicinal, dental and veterinary use; Biocides;</p>

Pharmaceutical preparations for the prevention and treatment of ocular disorders or diseases, for the treatment of bacteria-based diseases, and for the treatment of diabetes, and anti- infective preparations, antiviral preparations, antibiotics, antifungal preparations and vaccines; Ferments for medical or veterinary use
Class 040. All goods and services in the class are opposed, namely: Waste treatment services; marine waste treatment services; treatment of waste by way of biocidal treatments of sanitary bins, nappy bins, adult nappy bins and waste bins; biological waste water treatment, namely, microbial and sequestrant treatment of greywater and blackwater pipes in the marine industry
Class 042. All goods and services in the class are opposed, namely: Scientific research and analysis services relating to waste treatment and the treatment of waste in the marine industry; scientific research and analysis services relating to the use of natural materials and substances in the treatment of waste and the treatment of waste in the marine industry and in relation to bacillus, bacillus fermentation and bacillus fermentation products; scientific consultancy, analysis and research and development services relating to the treatment of sanitary bins, nappy bins, adult nappy bins and waste bins and microbial and sequestrant treatment of greywater and blackwater pipes in the marine industry

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3599610	Application Date	12/04/2007
Registration Date	03/31/2009	Foreign Priority Date	NONE
Word Mark	23ANDME		
Design Mark			
Description of Mark	The mark consists of a pair of rectangles with rounded corners, one darker than the other and the junction of the two being lightest in tone, crossed to form a lopsided x resembling a stylized chromosome, with the numerals and letters "23andMe" appearing to the right.		
Goods/Services	Class 042. First use: First Use: 2007/11/14 First Use In Commerce: 2007/11/14 Providing scientific analysis and informational reports based upon results of laboratory testing in the field of genetics; providing online computer databases featuring information based on aggregated results of genotyping; application service provider (ASP) featuring software for providing access to multiple databases that contain aggregated results of genotyping; application service provider (ASP) featuring software for use in data management, data storage, data analysis, report generation, user identification, and membership identification, all in the fields of genetics and genetic testing; scientific research in the fields of genetics, genetic testing, genetic screening, genotyping,		

phenotyping, molecular analytics, and ancestry			
U.S. Registration No.	3627981	Application Date	12/04/2007
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	23ANDME		
Design Mark			
Description of Mark	The mark consists of a pair of rectangles with rounded corners, one darker than the other and the junction of the two being lightest in tone, crossed to form a lopsided x resembling a stylized chromosome, with the numerals and letters "23andMe" appearing to the right.		
Goods/Services	Class 041. First use: First Use: 2007/10/16 First Use In Commerce: 2007/10/16 Providing an online resource center, namely, online articles and papers in the fields of genetic testing and genotype technologies; providing a website featuring online publications in the nature of articles, journals, brochures, leaflets, guides and manuals in the fields of genetic testing and genotype technologies; providing an online publication in the nature of an interactive encyclopedia in the fields of genetic testing and genotype technologies		
U.S. Registration No.	3596012	Application Date	12/04/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	23ANDME		
Design Mark			
Description of Mark	The mark consists of a pair of rectangles with rounded corners, one darker than the other and the junction of the two being lightest in tone, crossed to form a lopsided x resembling a stylized chromosome, with the numerals and letters "23andMe" appearing to the right.		
Goods/Services	Class 045. First use: First Use: 2007/11/14 First Use In Commerce: 2007/11/14 Online social networking services in the field of genetics		

Attachments	77343761#TMSN.jpeg (1 page)(bytes) 77343754#TMSN.jpeg (1 page)(bytes) 77343745#TMSN.jpeg (1 page)(bytes) NOO - GENESIS BIOSCIENCES and Design.pdf (8 pages)(150956 bytes)
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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	/Beth M. Goldman/
Name	Beth M. Goldman
Date	11/30/2010

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

In the Matter of Application Serial No. 77/832463
Published in the *Official Gazette* on August 3, 2010
Trademark: **GENESIS BIOSCIENCES and Design**

<p>23andMe, Inc., Opposer v. CKM Holdings Inc., Applicant.</p>	
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NOTICE OF OPPOSITION

23andMe, Inc. (“Opposer”), a Delaware corporation having a principal place of business at 2606 Bayshore Parkway, Mountain View, California 94043, believes it will be damaged by registration of the mark GENESIS BIOSCIENCES and Design shown in Serial No. 77/832463 in International Classes 1, 5, 40, and 42, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer has obtained all necessary extensions of time in which to oppose the challenged trademark following publication.
2. CKM Holdings Inc. (“Applicant”) has filed an application to register the mark GENESIS BIOSCIENCES and Design for “bacillus and other microbes suspended in powdered or liquid form for sanitation, odor control and wastewater treatment

applications; growth stimulant for microbial products used in the degradation of hydrocarbon contaminants; microbial spill control liquid for bioremediation; biologically active enzymes and microorganisms that are aimed at sanitising water environments and to treat the activation and optimisation of biological filter systems; colorimetric surface swab to indicate presence of chemical or biological substance; nutritive additive to enhance the biological activity of water, soil, seeds and plants for purposes of fertilization and bioremediation of pollutants” in International Class 1, for “biological preparations for medical purposes; microbiocides for industrial and institutional manufacturing processes and wastewater applications; antimicrobial coatings to treat the growth of mold, mildew, bacteria and fungus on various surfaces; bacterial and bacteriological preparations for medical or veterinary purposes; bacterial poisons; bactericides; bacteriostats for medicinal, dental and veterinary use; biocides; pharmaceutical preparations for the prevention and treatment of ocular disorders or diseases, for the treatment of bacteria-based diseases, and for the treatment of diabetes, and anti-infective preparations, antiviral preparations, antibiotics, antifungal preparations and vaccines; ferments for medical or veterinary use” in International Class 5, for “waste treatment services; marine waste treatment services; treatment of waste by way of biocidal treatments of sanitary bins, nappy bins, adult nappy bins and waste bins; biological waste water treatment, namely, microbial and sequestrant treatment of greywater and blackwater pipes in the marine industry” in International Class 40, and for “scientific research and analysis services relating to waste treatment and the treatment of waste in the marine industry; scientific

research and analysis services relating to the use of natural materials and substances in the treatment of waste and the treatment of waste in the marine industry and in relation to bacillus, bacillus fermentation and bacillus fermentation products; scientific consultancy, analysis and research and development services relating to the treatment of sanitary bins, nappy bins, adult nappy bins and waste bins and microbial and sequestrant treatment of greywater and blackwater pipes in the marine industry” in International Class 42, as evidenced by the publication of such mark in the *Official Gazette* on August 3, 2010.

3. Applicant is, upon information and belief, a Delaware corporation having a place of business at 3440 Preston Ridge Road, Suite 310, Alpharetta, Georgia 30005.

4. Opposer has used the mark 23ANDME and Design in connection with a wide variety of goods and services in the field of biology since at least as early as 2007. Opposer is the owner of a number of registrations for 23ANDME and Design, including Registration No. 3599610 registered March 31, 2009 for scientific research and analysis services in the fields of genetics and genetic testing, Registration No. 3627981 registered May 26, 2009 for providing an online resource center, website, and interactive encyclopedia in the fields of genetic testing and genotype technologies, and Registration No. 3596012 registered March 24, 2009 for online social networking services in the field of genetics.

5. There is no issue as to priority. Applicant filed its application with a § 44(d) priority claim of April 30, 2009, and the date of issuance of Opposer’s earliest registration is March 24, 2009.

6. Opposer has sold its goods and services under the mark 23ANDME and Design throughout the United States and has developed exceedingly valuable goodwill with respect to the 23ANDME and Design mark.

7. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods and services, Opposer has gained for its 23ANDME and Design mark a most valuable reputation and has created, in the minds of the buying public, an exclusive association between the 23ANDME and Design mark and its goods and services.

8. The trademark proposed for registration by Applicant, namely, GENESIS BIOSCIENCES and Design, is likely to be confused with Opposer's 23ANDME and Design mark because the marks are highly similar in appearance and overall commercial impression as can be seen from a comparison of the two marks, reproduced below:



9. Adding to the likelihood of confusion between the marks, Opposer has used and continues to use versions of 23ANDME and Design which appear in the same or

similar colors as the design portion of Applicant's GENESIS BIOSCIENCES and Design mark, as shown below:



10. Applicant seeks to register GENESIS BIOSCIENCES and Design as a mark in connection with goods and services that are closely related to the goods and services of Opposer and such use so nearly resembles Opposer's use as to be likely to cause confusion, to cause mistake, or to deceive within the meaning of 15 U.S.C. § 1052(d).

11. If Applicant is permitted to use and register GENESIS BIOSCIENCES and Design for its goods and services as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark is confusingly similar to Opposer's 23ANDME and Design mark. Persons familiar with Opposer's 23ANDME and Design mark would be likely to purchase Applicant's GENESIS BIOSCIENCES and Design goods and services as goods and services offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's goods and services marketed under GENESIS BIOSCIENCES and Design would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods and services offered under its 23ANDME and Design mark.

12. The 23ANDME and Design mark is distinctive and famous throughout the United States, and has become closely associated with the goods and services of Opposer. The 23ANDME and Design mark became famous prior to the date of filing of Applicant's application for GENESIS BIOSCIENCES and Design and the claimed priority date in Applicant's application for GENESIS BIOSCIENCES and Design.

13. The trademark proposed for registration by Applicant, namely, GENESIS BIOSCIENCES and Design, is likely to cause dilution by blurring and dilution by tarnishment of Opposer's 23ANDME and Design mark, and also reduces the capacity of the famous 23ANDME and Design mark to identify the goods and services of Opposer.

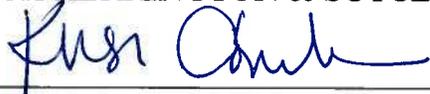
14. On information and belief, Applicant filed a § 44(d) priority claim based on a European Community application, but it is unable to register this application under § 44(e) because it cannot establish that the country where the foreign application was filed is its country of origin.

15. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,
ORRICK HERRINGTON & SUTCLIFFE LLP

Dated: November 30, 2010

By: 

Beth M. Goldman

Kristin S. Cornuelle

Attorneys for 23andMe, Inc.

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San Francisco, CA 94105

415-773-5700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Opposition was served by First Class Mail, on November 30, 2010, on counsel for Applicant at the following address:

Matthew J. Smith
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100 S. Fourth Street, Suite 1100
St. Louis, MO 63102

Dated: November 30, 2010

By: 

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