

ESTTA Tracking number: **ESTTA394385**

Filing date: **02/22/2011**

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	Metagenics, Inc.
Granted to Date of previous extension	02/23/2011
Address	100 Avenida La Pata San Clemente, CA 92673 UNITED STATES

Attorney information	Dennis H. Cavanaugh D H Cavanaugh Associates 555 Fifth Avenue, 17th Floor New York, NY 10017 UNITED STATES dhc@dhcavanaugh.net Phone:212-856-7210
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Applicant Information

Application No	85090718	Publication date	10/26/2010
Opposition Filing Date	02/22/2011	Opposition Period Ends	02/23/2011
Applicant	FJGS Holdings, LLC P.O. Box 754 Painesville, OH 44077 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: 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. Registration No.	2536773	Application Date	08/21/2001
Registration Date	02/05/2002	Foreign Priority Date	NONE
Word Mark	BIOSOM		

Design Mark	BIOSOM
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/03/08 First Use In Commerce: 2001/03/08 Dietary supplements

Attachments	76302941#TMSN.gif (1 page)(bytes) BIOSOMAL Opposition 2.pdf (4 pages)(15099 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	/Dennis H. Cavanaugh/
Name	Dennis H. Cavanaugh
Date	02/22/2011

NOTICE OF OPPOSITION

Pursuant to Trademark Rule 2.102, Metagenics, Inc., a California corporation having an office and place of business at 100 Avenida La Pata, San Clemente, California 92672 (“Opposer”), believes that it is and will be damaged by registration of the shown in Serial Number 85/090,718 in International Class 5 and opposes the same. As grounds for the opposition it is alleged that:

1. The Applicant, FJGS Holdings, LLC (“Applicant”), is upon information and belief, a Delaware limited liability company, with offices located at P.O. Box 754, Painesville, Ohio 44077.

2. On or about July 22, 2010, Applicant filed the above-referenced trademark application to register the mark BIOSOMAL LABS for “Dietary supplements” in International Class 5, under Section 1B.

3. Opposer adopted and has been using the mark BIOSOM in interstate commerce since at least as early as March 8, 2001, as a trademark to identify its dietary supplements. Opposer continues to use the mark BIOSOM to identify its dietary supplements and such use has never been abandoned.

4. Opposer is the owner of the following registration for the mark BIOSOM on the Principal Register, which registration is valid and subsisting and has never been abandoned: Registration No. 2,536,773 issued November 13, 2001, for “dietary supplements” in Class 5.

5. Applicant’s filing date of July 22, 2010, is subsequent to both Opposer’s date of first use of BIOSOM, and the date of its first registration. Thus, priority is not at issue.

6. Applicant’s mark BIOSOMAL LABS is confusingly similar in sight, sound and meaning, to Opposer’s BIOSOM mark. Applicant’s mark is virtually identical to Opposer’s mark. Consequently, Applicant’s mark so closely resembles Opposer’s mark as to be likely to be confused

with and mistaken for Applicant's mark. As a result, there is a significant likelihood of confusion between Applicant's mark and Opposer's mark.

7. Applicant's goods are identical to and closely related to those of Opposer, thus increasing the likelihood of confusion that may result from registration and use of Applicant's mark.

8. Opposer has invested substantial time, effort and money in using and promoting its BIOSOM mark and the goods bearing them. Through such prior use, promotion and advertising, Opposer has built up a valuable and protectable goodwill associated therewith. By virtue of Opposer's continuous, exclusive and widespread use of its BIOSOM mark they have become well-known by the relevant purchasing public as trademark of Opposer.

9. Registration of Applicant's mark is likely to cause the public to be confused, misled or deceived, and to falsely believe that Applicant's goods are affiliated, associated, approved, sponsored, licensed or authorized by Opposer or others authorized or licensed by Opposer to use the BIOSOM mark. Persons familiar with Opposer's mark are likely to purchase Applicant's goods believing they are marketed by, affiliated with or endorsed by Opposer, when in fact they are not.

10. Registration of Applicant's mark is likely to cause harm and damage to Opposer and its mark by causing confusion, mistake and/or deception as to the respective rights of the parties and as to the source of the goods marketed and provided under the Applicant's mark, and by constituting a cloud on Opposer's prior established rights in its BIOSOM mark. Such registration would give Applicant at least a prima facie right to use Applicant's mark, thereby causing continuing serious and irreparable harm to Opposer's rights in its mark, its business and to the goodwill of such business symbolized by Opposer's mark. Registration of Applicant's mark will also tend to reduce the distinctiveness, value and goodwill of Opposer's mark.

CERTIFICATE OF SERVICE

DENNIS H. CAVANAUGH, declares that:

1. I am counsel for the Opposer in the captioned action, and that on the execution date which appears below, a true copy of the foregoing was served on Applicant's designated representative for correspondence, by causing the same to be placed in an official depository under the exclusive care and custody of the United States Postal Service, first class mail, postage prepaid, addressed as follows:

Jennifer E. Horn, Esq.
Mansour, Gavin, Gerlack & Manos Co., LPA
55 Public Square, Suite 2150
Cleveland, OH 44113-1994

2. Pursuant to 28 U.S.C. Sect. 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on February 22, 2011

/Dennis H. Cavanaugh/
By _____
Dennis H. Cavanaugh

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that on February 22, 2011, this correspondence is being filed electronically with the U.S. Patent and Trademark Office.

/Dennis H. Cavanaugh/

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