

ESTTA Tracking number: **ESTTA436511**

Filing date: **10/18/2011**

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	Biotivia, LLC
Granted to Date of previous extension	10/22/2011
Address	1 River Place, Ste. 1001 New York, NY 10036 UNITED STATES

Attorney information	Aaron Shechet, Esq. Chandler & Shechet, LLP 1844 Bagley Ave. Los Angeles, CA 90035 UNITED STATES Counsel@SolutionsLLP.com Phone:310-339-1354
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Applicant Information

Application No	85193003	Publication date	08/23/2011
Opposition Filing Date	10/18/2011	Opposition Period Ends	10/22/2011
Applicant	ChromaDex Inc. 10005 Muirlands Suite G Irvine, CA 92618 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Phytochemicals for use in the manufacturing of dietary supplements, nutritional supplements, nutritional beverages, pharmaceuticals and cosmetics
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	Oppsigned85193003.pdf (6 pages)(1080578 bytes) ExhibitAfinal.pdf (2 pages)(338147 bytes) ExhibitBfinal.pdf (2 pages)(342324 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	/Aaron Shechet/
Name	Aaron Shechet, Esq.
Date	10/18/2011

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

In the matter of trademark application Serial No. 85193003
For the mark: THE NEXT GENERATION RESVERATROL
Published in the Official Gazette on August 23, 2011

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BIOTIVIA, LLC
Opposer

Opposition No.:

v.

CHROMADDEX, INC.
Applicant

-----x

NOTICE OF OPPOSITION

Biotivia, LLC
A Delaware Limited Liability Company
1 River Place, Ste. 1001
New York NEW YORK 10036

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. According to the Trademark Office records, on or about December 8, 2010, Applicant, Chromodex, Inc. ("Chromadex"), filed an intent-to-use application, under section 1B, for the registration of the mark "The Next Generation Resveratrol," with Serial No. 85193003, (the "Mark") in International Class 001 for "Phytochemicals for use in the manufacturing of dietary supplements, nutritional supplements, nutritional beverages, pharmaceuticals and cosmetics."

2. The Mark was published for opposition on or about August 23rd, 2011.
3. Opposer, Biotivia, LLC (“Biotivia”), has timely filed for, and the Trademark Trial and Appeal Board has granted, a 30-day extension of time to file an opposition to the registration of the Mark until October 22, 2011.
4. Biotivia is a Delaware Limited Liability Company with a principal place of business at 1 River Place, Ste. 1001, New York, NEW YORK 10036 and manufactures and sells a variety of dietary supplements, including supplements which contain resveratrol and/or pterostilbene ingredients.
5. Biotivia sells one or more finished products which contain the ingredient Pterostilbene.
6. Chromodex sells one or more finished products which contain the ingredient Pterostilbene, and is a direct competitor of Biotivia.
7. Chromodex applies the Mark, on its website and in its advertising, to pterostilbene products.

8. The phrase “Next Generation” is defined as “pertaining to the next generation in a family; also, pertaining to the next stage of development or version of a product, service, or technology.” (See Exhibit A).
9. Pterostilbene is described, in scientific and advertising literature, as a compound which is chemically related to resveratrol but has certain advantages over resveratrol, including higher bioavailability. Specifically, Pterostilbene is “a double-methylated version of resveratrol exhibiting a higher bioavailability as it is more easily transported into the cell and more resistant to degradation and elimination.” (See Exhibit B).
10. Pterostilbene is often described as the next stage of development of resveratrol. Words like “next generation of resveratrol” and “next level of resveratrol” are used to describe pterostilbenes in general, and not any particular brand of pterostilbene, even when referring to Chromadex’s products.
11. At least one article dating back to 2009, well before Applicant’s use of the Mark, touts pterostilbene as an advancement on resveratrol.
12. The Mark “The Next Generation Resveratrol,” by indicating that Chromadex’s products, or pterostilbene in general, is an improvement over existing resveratrol supplements, is laudatory and informational, and thus is descriptive. Trademark Act section (e)(1); 15 U.S.C. § 1052(e)(1).

13. The Mark consists primarily of a combination of words which, when applied to the goods of Chromadex, is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), in that the Mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the goods identified in the application for registration of the Mark, and/or is merely laudatory, and has no acquired distinctiveness or secondary meaning sufficient to support registration.
14. The Mark does not function to identify Chromadex's goods and distinguish them from those offered by others and has no acquired distinctiveness or secondary meaning sufficient to support registration.
15. Registration of the Mark will prevent Biotivia, a seller of pterostilbene supplements, from using phrases which are descriptive of pterostilbene, and will inhibit Biotivia's ability to accurately describe and effectively market its products.
16. Chromadex seeks to prevent Biotivia from using phrases it deems "similar" to the Mark, and has filed a lawsuit in the Central District of California, case number 8:11-CV11-01273 CJC (MLGx), partly based on Biotivia's use of phrases such as "taking resveratrol to the next level," which are descriptive of pterostilbene.
17. Because the Mark is descriptive, registration should be refused.

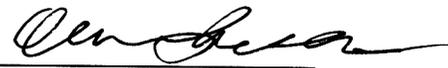
WHEREFORE, Biotivia prays that said application Serial No. 85193003 be rejected, that no registration be issued thereon to applicant, and that this opposition be sustained in favor of Biotivia.

Biotivia appoints as its attorneys in this proceeding Aaron Shechet and Leigh Chandler of the firm Chandler & Shechet, LLP, 1844 Bagley Ave., Los Angeles, CA 90035, to whom all correspondence in this proceeding should be addressed.

Dated October 18, 2011

Respectfully submitted,

CHANDLER & SHECHET, LLP



AARON SHECHET
Counsel for Opposer,
BIOTIVIA, LLC

1844 Bagley Ave.,
Los Angeles, CA 90035
(310) 339-1354

CERTIFICATE OF SERVICE (37 C.F.R. §§ 2.101, 2.119)

I, AARON SHECHET, Attorney of Record for Opposer, Biotivia, LLC, hereby certify that a true and correct copy of the foregoing **Notice of Opposition**, along with all Exhibits thereto, was served by:

1. transmission by the first class mail service of the United States Postal Service, and
2. by transmission by the Certified first class mail service of the United States Postal Service,
on the attorney of record for the opposed application, at the correspondence address of record in the USPTO for said person as of the date of service, as set forth below:

JOSEPH T. NABOR
FITCH EVEN TABIN & FLANNERY
120 S LASALLE ST STE 1600
CHICAGO, IL 60603-3590

Date of Mailing: October 18, 2011


Aaron Shechet

In the matter of trademark application Serial No. 85193003
For the mark: THE NEXT GENERATION RESVERATROL

Opposer: BIOTIVIA, LLC
Opposition No.:

Notice of Opposition

EXHIBIT A

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Dictionary Thesaurus Flashcards Word Dynamo ^{DATA} Quotes Reference Translator Spanish

Did you know: Scrabble is a fun game, but what is the not-so-fun definition of "to scrabble?"

Like this word?

next-generation

Main Entry: next-generation
Part of Speech: *adj*
Definition: pertaining to the next generation in a family; also, pertaining to the next stage of development or version of a product, service, or technology
Example: Programmers are now developing next-generation software.

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Word Dynamo
 Searching for next-generation? How many words do you actually know?

Matching Quote
"The next generation of women will enter a world in which they are perceived to have more opportunities for creating fulfilling lives than women have ever had before."
 -Elizabeth Debold

Related Searches
 Degrassi the next...
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Nearby Words
 next-day
 next-door
 next-friend
 next-generation
 next-kin
 next-to-last
 nextdoor

Next-generation is always a great word to know. So is **bezoar**. Does it mean:

- the offspring of a zebra and a donkey.
- a calculus or concretion found in the stomach or

search dictionary

Scripts Partially Allowed, 11/13 (google.com, google-analytics.com, facebook.com, fbcdn.net, dictionary.com, quantserve.com, googlesyndication.com, reference.com, facebook.net, scorecardresearch.com, doubleclick.net) | <SCRIPT>:62 | <OBJECT>:0

dictionary.reference.com/browse/next-generation

In the matter of trademark application Serial No. 85193003
For the mark: THE NEXT GENERATION RESVERATROL

Opposer: BIOTIVIA, LLC
Opposition No.:

Notice of Opposition

EXHIBIT B

