

ESTTA Tracking number: **ESTTA449438**

Filing date: **01/04/2012**

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	Lewis County Primary Care Center, Inc.		
Entity	Corporation	Citizenship	Kentucky
Address	RT 3 BOX 317 PO BOX 550 VANCEBURG, KY 41179-0550 UNITED STATES		

Attorney information	Jack A. Wheat STITES & HARBISON, PLLC 400 West Market Street Suite 1800 Louisville, KY 40202 UNITED STATES jwheat@stites.com Phone:(502) 587-3400		
----------------------	--	--	--

Applicant Information

Application No	77952833	Publication date	12/13/2011
Opposition Filing Date	01/04/2012	Opposition Period Ends	01/12/2012
Applicant	LEAP into Wellness 480 Route 6A East Sandwich, MA 02537 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2010/04/27 First Use In Commerce: 2010/04/27 All goods and services in the class are opposed, namely: Consulting in the field of health and wellness to bring about personal happiness; Counseling services in the fields of health, nutrition and lifestyle wellness; Dietitian service; Providing a website featuring content regarding healthy living and lifestyle wellness; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Wellness and health-related consulting services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3276666	Application Date	02/25/2005
Registration Date	08/07/2007	Foreign Priority Date	NONE

Word Mark	LEAP
Design Mark	
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2005/00/00 First Use In Commerce: 2005/00/00 Medical testing services, namely fitness evaluations; health care services, namely health screening

Attachments	78575304#TMSN.jpeg (1 page)(bytes) LeapIntowellnessOPP.pdf (3 pages)(102768 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	/jackawheat/
Name	Jack A. Wheat
Date	01/04/2012

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

In the matter of Application Serial No. 77/952,833
Filed: March 8, 2010
Mark: LEAP into Wellness
Published in the *Official Gazette* on December 13, 2011.

LEWIS COUNTY PRIMARY CARE CENTER, INC.)	
doing business as PRIMARYPLUS,)	
)	
Opposer,)	
)	OPPOSITION NO.
v.)	
)	
LEAP INTO WELLNESS,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Comes the Opposer, LEWIS COUNTY PRIMARY CARE CENTER, INC., (hereinafter “Lewis County” or “Opposer”), and for its Opposition to the pending application to register the mark LEAP prosecuted by LEAP INTO WELLNESS(hereinafter “Applicant”), Opposer submits the following:

1. Opposer, Lewis County Primary Care Center, Inc, is a Kentucky Corporation, with its principal place of business at 211 Ky 59, Vanceburg, Kentucky 41179.
2. Continuously since at least 2005, Lewis County has used the mark LEAP in commerce in association with health care services, including wellness and occupational health services such as physical examinations, health screening services, including evaluation of blood

work, biometrics, health and dietary consultations, substance abuse testing, treatment coordination and educational programs and materials relating to these services.

3. Lewis County is the owner of a registration of the mark LEAP issued by the United States Patent & Trademark Office (the “PTO”) for “Medical testing services, namely fitness evaluations; health care services, namely health screening” in International Class 44, namely registration number 3,276,666 issued on August 7, 2007 based upon a first use dating back until at least 2005.

4. On March 8, 2010, Applicant filed an intent to use application with the PTO to register the mark “LEAP into Wellness” for “Consulting in the field of health and wellness to bring about personal happiness; Counseling services in the fields of health, nutrition and lifestyle wellness; Dietitian service; Providing a website featuring content regarding healthy living and lifestyle wellness; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Wellness and health-related consulting services” in International Class 44. That application was published in the *Official Gazette* on December 13, 2011.

5. The continued use by Lewis County of the mark LEAP, as well as the February 25, 2005 filing priority date of the application which matured into its registration of the mark predate the first use dates claimed by Applicant as well as the filing date of the opposed application, thus, Opposer has priority of use.

6. The mark sought to be registered is so similar to Opposer’s mark as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)), all to Opposer’s irreparable damage.

7. Accordingly, Opposer believes that it will be damaged by registration of the mark sought to be registered in that, if registration issues, (a) consumers are likely to purchase Applicant's services believing them to be the Opposer's services, or to be sponsored by or associated with Opposer; (b) any defects in Applicant's services may be attributed to the Opposer; and (c) registration of mark will give Applicant the presumptive right to use the mark with its services. All of these effects of registration will cause injury to Opposer.

WHEREFORE, Opposer prays that the registration sought in Application Serial No. 77/952,833 be refused.

/jackawheat/
Jack A. Wheat
Lindsay Yeakel Capps
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202
Telephone: (502) 587-3400

Attorneys for Opposer

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Counsel for the Applicant by mailing said copy on this 4th day of January, 2012, via First Class Mail, postage prepaid to:

Stephen P. Kearney
Attorney at Law
559 Summer Street
Duxbury, MA 02332

/jackawheat/
Jack A. Wheat,
One of Attorneys for Opposer