

ESTTA Tracking number: **ESTTA469244**

Filing date: **04/26/2012**

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	Life Extension Foundation Buyers Club, Inc.		
Entity	Corporation	Citizenship	Florida
Address	3600 West Commercial Blvd. Fort Lauderdale, FL 33309 UNITED STATES		

Attorney information	Robert Kain Kain & Associates, Attorneys at Law, P.A. 900 S.E. Third Ave. Suite 205 Fort Lauderdale, FL 33316 UNITED STATES rkain@complexip.com, dspielman@complexip.com, ekotler@complexip.com
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### Applicant Information

Application No	85446776	Publication date	03/27/2012
Opposition Filing Date	04/26/2012	Opposition Period Ends	04/26/2012
Applicant	Immunotopia, LLC 109 Enterprise Parkway, Suite 201 Boerne, TX 78006 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Antioxidant enriched coffee
Class 030. All goods and services in the class are opposed, namely: Beverages made of coffee; Beverages with a coffee base; Coffee; Coffee; Coffee beans; Coffee essences for use as substitutes for coffee; Coffee extracts; Coffee-based beverages; Green coffee; Ground coffee beans; Iced coffee; Instant coffee; Roasted coffee beans

### Grounds for Opposition

Other	Failure to establish evidence of intent to use
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Attachments	plead-Not-Opposition-ss.pdf ( 5 pages )(113980 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	s/RCK/
Name	Robert Kain
Date	04/26/2012

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

In the matter of trademark application Serial No. 85/446,776  
Published for opposition in the Official Gazette of March 27, 2012  
Mark: SMARTCOFFEE and Design

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Life Extension Foundation )  
Buyers Club, Inc. )  
Opposer, )  
 )  
v. ) Opposition No. \_\_\_\_\_  
 )  
Immunotopia, LLC )  
Applicant. )  
----- )

**NOTICE OF OPPOSITION**

Life Extension Foundation Buyers Club, Inc., (herein "LEF") a Florida corporation, having a business address at 3600 West Commercial Blvd., Fort Lauderdale, FL 33309, believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant, Immunotopia, LLC ("Immunotopia"), seeks to register SMARTCOFFEE and design as an intent to use (§1(b)) trademark with respect to "Beverages made of coffee; Beverages with a coffee base; Coffee; Coffee; Coffee beans; Coffee essences for use as substitutes for coffee; Coffee extracts; Coffee-based beverages; Green coffee; Ground coffee beans; Iced coffee; Instant coffee; Roasted coffee beans" in Class 30 and "Antioxidant enriched coffee" in Class 05.
2. Immunotopia filed for the intent to use (§1(b)) U.S. trademark on September 24, 2010.

3. Opposer, LEF has also filed a trademark application for the mark ONE SMART CUP OF COFFEE (Serial No. 85/503,140) on December 23, 2011 for “ground coffee beans” in Class 30.

4. LEF and its affiliate Life Extension Foundation, Inc. are one of the world's largest organizations dedicated to finding scientific methods for addressing disease, aging, and death. Incorporated in 1980 the companies fund pioneering scientific research aimed at achieving an indefinitely extended healthy human lifespan. LEF and its affiliates are the owners of a family of trademarks relating to its LIFE EXTENSION brand. LEF and its affiliates maintain over 100 domain names as well as various active web sites such as [www.lifeextensionfoundation.org](http://www.lifeextensionfoundation.org), [www.LEF.org](http://www.LEF.org), [www.LifeExtension.com](http://www.LifeExtension.com), [www.lifeextensionretail.com](http://www.lifeextensionretail.com), [www.LifeExtensionRX.com](http://www.LifeExtensionRX.com), [www.LEF.com](http://www.LEF.com) and others . Petitioner is a for-profit corporation and licensee of LEF which sells vitamins, nutritional supplements and healthy food products under the LIFE EXTENSION brand name and using LIFE EXTENSION trademarks. The magazine, “Life Extension,” is a monthly publication first published in 1994 which is currently circulated to a world-wide audience of over 132,000 persons and professional organizations. It delivers up-to-date coverage of the latest scientific and medical breakthroughs from around the world. LEF receives requests to reprint articles from Life Extension from all over the world and the articles are frequently republished worldwide both in print and on the Internet.

5. LEF’s mark ONE SMART CUP OF COFFEE has been and is extensively promoted on the Internet and in the Life Extension Magazine.

6. LEF has spent significant money and time to prepare for the launch of its new product, ONE SMART CUP OF COFFEE. LEF’s efforts include product development, selection

of the mark, internal trademark search, development costs, the printing and manufacturing of product materials and packaging with use of the mark, and a significant marketing campaign.

7. The proposed goods of Immunotopia and the goods of LEF are identical and/or substantially similar and related.

8. Immunotopia's SMARTCOFFEE and Design Mark, as applied to the goods set forth in the application herein opposed, so resembles LEF's ONE SMART CUP OF COFFEE Mark as applied to its goods that it is likely to cause confusion, mistake and/or deception, in the relevant trade and with consumers.

9. Upon information and belief, Immunotopia does not have the requisite bona fide intent to use his mark in commerce at the time of filing his application. Upon information and belief, Immunotopia as an individual has no relevant experience, training, or business connections of record, yet is claiming to have a bona fide intention to use the mark. Upon information and belief, Immunotopia does not have the capacity to conduct a genuine commercial enterprise involving the manufacture and/or distribution of the thirteen (13) different listed intent to use products. Upon information and belief, Immunotopia does not have plans for how they might proceed with such a business. See Boston Red Sox Baseball Club Ltd. Ptr. v. Sherman, 2008 TTAB Lexis 67, Case No. 91172268 (TTAB 2008).

10. If Immunotopia is permitted to register the SMARTCOFFEE and design Mark for the goods set forth in the application, confusion of the trade and public is likely to result, such confusion resulting in damage and injury to LEF.

11. Purchasers and potential purchasers, on seeing Immunotopia's SMARTCOFFEE and design Mark used in connection with its goods are likely to believe, in error, that such goods are offered in association or affiliation with or under license from LEF.

12. If Immunotopia is permitted to register its mark for the goods set forth in the application herein opposed, confusion of the relevant trade and public resulting in damage and injury to LEF would be likely to result. Any persons familiar with the goods of LEF would be likely to assume that Immunotopia's goods are sponsored by or produced under license from or otherwise affiliated with LEF. Furthermore, any objection to or fault found with Immunotopia's goods provided under its mark would necessarily reflect on and seriously injure the reputation that LEF has established for its goods sold and services offered under its ONE SMART CUP OF COFFEE Mark.

13. If Immunotopia were granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to LEF.

WHEREFORE, LEF requests that registration of the mark SMARTCOFFEE and design of application No. 85/446,776 be refused and that this opposition be sustained.

Any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-1231 and any overpayment may be credited thereto.

Dated: April 26, 2012

Respectfully submitted,

Fort Lauderdale, Florida

By: /Robert Kain/

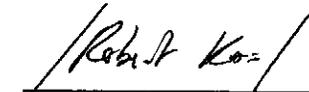
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Attorney for Opposer LEF

**Certificate of Service/Mailing**

I HEREBY CERTIFY that on Apr. 26, 2012, a copy of the Opposition was forwarded via regular first class US Mail to:

Immunotopia, LLC  
109 Enterprise Parkway, Suite 201  
Boerne, Texas 78006  
tel: 210-542-0206  
patkins@gvtc.com

  
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Robert C. Kain, Jr.

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