

ESTTA Tracking number: **ESTTA512837**

Filing date: **12/21/2012**

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	Jason Head
Granted to Date of previous extension	12/22/2012
Address	P.O. Box 70 Cape Charles, VA 23310 UNITED STATES

Correspondence information	Jason Head Attorney of Record Vision Legal, PLC One Columbus Center Suite 600 Virginia Beach, VA 23462 UNITED STATES jason@visionlegalfirm.com Phone:757-270-4458
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Applicant Information

Application No	79105772	Publication date	10/23/2012
Opposition Filing Date	12/21/2012	Opposition Period Ends	12/22/2012
International Registration No.	1098432	International Registration Date	09/29/2011
Applicant	Nicoventures Limited 1 Water Street London WC2R 3LA UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations for human use, namely, transdermal patches, medicated lozenges and pharmaceutical preparations in microtablet form; all containing nicotine
Class 010. All goods and services in the class are opposed, namely: Medical devices for human use, namely, mouth sprays, nasal sprays and inhalators; all containing nicotine
Class 030. All goods and services in the class are opposed, namely: Chewing gum

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.	4048868	Application Date	04/05/2011
Registration Date	11/01/2011	Foreign Priority Date	NONE
Word Mark	NICO VENTURES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2005/10/20 First Use In Commerce: 2008/08/15 Health care consulting services		

Attachments	85286222#TMSN.jpeg (1 page)(bytes) Nico Ventures, LLC Opposition to Serial 79105772.pdf (8 pages)(1910361 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	/Jason Head/
Name	Jason Head
Date	12/21/2012

In the United States Patent and Trademark Office
of the Assistant Commissioner for Trademarks

_____)	
In re Application of:)	
Nicoventures Limited)	
Serial No.: 79105772)	
Filed: December 20, 2012)	Attorney: Jason Head
Mark: NICOVENTURES)	
_____)	

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Nico Ventures, LLC)
v.
Nicoventures Limited

NOTICE OF OPPOSITION

Nico Ventures, LLC; as protestor, a Virginia Limited Liability
Company, located at P.O. Box 70, Cape Charles, Virginia 23310)

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

The grounds for opposition are as follows:

Registration of the applied for mark should be refused because of a likelihood
of confusion with the mark in U.S. Registration No. 4048868. Trademark Act Section
2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*

Trademark Act Section 2(d) bars registration of an applied for mark that so resembles a
registered mark that it is likely that a potential consumer would be confused or mistaken or
deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15
U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ
563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there
is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all the factors
are necessarily relevant or of equal weight, and any one factor may be dominant in a given case,
depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, ___ F.3d
___, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315,
65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ
at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity
of the goods/services, and similarity of trade channels of the goods/services. *See In re Dakin's
Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

Here, the proposed mark is “NICOVENTURES”. The registrant’s mark is “NICO VENTURES”. The marks share the same lettering, sounds, appearance and wording and differ only with one space between the word NICO and the word VENTURE. The mere deletion of wording or a space from a registered mark may not be sufficient to overcome a likelihood of confusion. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int’l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). The applicant’s mark does not reach the sufficiency necessary to overcoming the likelihood of confusion with the registrant’s mark. The applicant’s mark does not create a distinct commercial impression because it contains the same common wording, appearance and connotation as registrant’s mark, and there is no other wording to distinguish it from registrant’s mark.

The Applicant attempts to draw a distinction in their mark from the registrant’s mark, based on the connotation of how the marks were developed. The registrant’s mark derived from the founder of the registrant company’s last name, while the applicant’s mark is a shorten name for *nicotine*. The one aspect that the applicant fails to address in their response is how a reasonable consumer will be able to make these distinctions, since this is not part of the registrant’s marketing efforts. Also the test offered by the applicant is a two-part test, where the marketing efforts of the similar marks must be assessed. The registrant never promotes in any marketing efforts, how the name of the company was derived from the founder’s last name. Therefore, it would be impossible for the reasonable consumer to make this distinction that the applicant offers, due to this knowledge on how the marks were developed not readily available to the general public.

Comparison of the Goods/Services & Trade Channels

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient to show that because of the conditions surrounding their marketing, or because they are otherwise related in some manner, the goods and/or services would be encountered by the same consumers under circumstances such that offering the goods and/or services under confusingly similar marks would lead to the mistaken belief that they come from, or are in some way associated with, the same source. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *see In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984); TMEP §1207.01(a)(i).

In the instant case, the proposed goods/services are as follows:

Class 5: “Pharmaceutical preparations for human use, namely, transdermal patches, medicated lozenges and pharmaceutical preparations in microtablet form; all containing nicotine”.

Class 10: "Medical devices for human use, namely, mouth sprays, nasal sprays and inhalators; all containing nicotine".

Class 30: "Chewing gum"

The registrant's goods/services are as follows:

Class 44: "Health care consulting services".

The undersigned has attached the registrant's website, which demonstrates that the registrant provides services on various health care needs, including consultations on combatting the addiction of cigarettes and other nicotine products. Consequently, the registrant's services are identified broadly enough to include the applicant's more specific recitation, namely goods that contain nicotine. In a likelihood of confusion analysis, the comparison of the parties' goods and/or services is based on the goods and/or services as they are identified in the application and registration, without limitations or restrictions that are not reflected therein. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); see *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638-39 (TTAB 2009); TMEP §1207.01(a)(iii). Additionally, unrestricted and broad identifications are presumed to encompass all services of the type described. See *In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identification set forth in the registrant's mark has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these services travel in all normal channels of trade, and are available to the same class of purchasers as applicant's purchasers. Specifically, registrant's health care consulting services, to the health care purchasing consumers, which are the same consumers of nicotine alternatives to cigarettes to boost the public health. The applicant's own website offers this public health concern as one of the reasons to choose its products to purchase. The registrant even has with its website store, the products of nicotine solution to assist customers combatting smoking and nicotine withdrawal. This web store also has two lines of natural health chewing gum for stress and healthy gums and teeth. These products are in direct competition with the applicant's mark.

Based upon the similarities between the marks and the services, consumer confusion is likely, and therefore the applicant's mark should not be permitted by the USPTO.



By _____
Attorney for Protestor

Date 12/20/2012

Exhibit 1

NICOVENTURES®

IDEAL HEALTH INNOVATION

Site search

Powered by Health Realizations, Inc.

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Smoke or Used to Smoke? The Healthiest Foods and Nutritional Supplements to Prevent Lung Cancer and Other Smoker's Diseases

© 2012 Health Realizations, Inc.

Nearly 21 percent of U.S. adults smoke cigarettes, and countless others have smoked at some point in their life. This habit continues to be the leading cause of preventable death in the country, causing about one out of every five deaths each year, according to the Centers for Disease Control and Prevention (CDC).

A top health concern for smokers is lung cancer, of which smoking causes about 90 percent of cases. Your risk of dying from lung cancer is 23 times higher for men who smoke cigarettes and 13 times higher for women compared to non-smokers. Aside from lung cancer, smoking can lead to other forms of cancer, coronary heart disease, stroke, and chronic obstructive lung disease.

The best way to prevent these illnesses, of course, is to quit smoking. But for those who are current or past smokers, there may be a way to reduce some of the harm cigarettes do to your body: make wise food choices.

Which Foods May be Best for Smokers?

New research has emerged that suggests certain compounds in fruits and vegetables can help to counteract some of the damage of smoking.

One study, published in the journal *Cancer*, found that certain flavonoid compounds including epicatechin, catechin, quercetin, and kaempferol helped to prevent lung cancer in



Quitting smoking -- which 70 percent of smokers hope to do -- is your best option to prevent smoker's diseases.

Exhibit 2

Nicoventures | What is Nicoventures?

www.nicoventures.co.uk/what-is-nicoventures

What is Nicoventures?

- What is Nicoventures?
 - About Us
 - Ownership

Nicoventures Limited is a newly created start-up company whose objective is to provide a new choice to smokers looking for a safer alternative to cigarettes.

Nicoventures will focus exclusively on the development and commercialisation of innovative regulatory approved nicotine products that provide a consumer-acceptable alternative to cigarettes without the serious risk to health of smoking.

We want to explore the development of innovative nicotine products that, subject to regulatory approval, will provide smokers with an alternative to cigarettes and a product they actually want to use.

Why are we different?

The UK Government's recently updated public health strategy for England recognises there are many smokers who may not want to quit smoking but who want a safer alternative to cigarettes.

We believe that the products currently on the market today are not meeting the needs of these smokers.

That is why we have brought together scientists, regulatory specialists, innovators and communication experts from a wide range of backgrounds to work together with the aim of providing smokers with a safer alternative to cigarettes.

What's the benefit for consumers?

We believe we can offer adult smokers a range of innovative regulatory approved nicotine products which will provide them with much of the experience they expect to get from a cigarette but without the serious risk to health of smoking.

Will there be a benefit for public health?

Working towards the goal of reducing the harm caused by smoking is something that should be of benefit to society. Our ambition is to develop and make available a range of products that will provide smokers with alternatives to cigarettes without the serious risk to health of smoking.

What are we doing now?

Nicoventures is exploring and developing a range of innovative nicotine products that, subject to regulatory approval, will provide a new choice to smokers looking for a safer alternative to cigarettes that they will want to use.

The products that Nicoventures is looking at are not currently available on the market. However, it's still early days, so watch this space...

nicoventures
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Exhibit 3

HELLO, NICO VENTURES [Dashboard](#) [My Account](#)

natural partners [Contact Support](#)

Customer Service (888) 633-7620 Monday - Friday 6:30 am to 5:00 pm AZ Time

[Vitamins & Supplements](#) | [Homeopathic Remedies](#) | [Herbs](#) | [Animal Health](#) | [Acupuncture & Oriental Medicine](#)

Home |



Nicotine Relief Supreme 4oz

Item # GA

Gaia Herbs/Professional Solutions

Wholesale Price: \$
Retail Price: \$

Quantity:

[Add to Cart](#)

[Add to Patient](#)

Description:

- Supports and Encourages the Process of Withdrawal from Smoking Habits
- Promotes Restfulness and Ease During Occasional Times of Stress
- Concentrated Synergistic Formula

Ingredients	Suggested Usage	Notes
<p>Serving Size: 15 drops Servings Per Container: 120 Amount Per Serving: Proprietary Blend Extracts From: <i>Lobelia herb & seed (Lobelia inflata),</i> <i>Wild Oats milky seed fresh (Avena sativa),</i> <i>St John's wort flower buds and tops</i> <i>(Hypericum perforatum),</i> <i>Passionflower</i> <i>flowering vine (Passiflora incarnata),</i> <i>Licorice root (Glycyrrhiza sp.) 48-52%</i></p>		

Exhibit 4:

The screenshot shows the website for 'natural partners'. The top navigation bar includes the user name 'HELLO, NICO VENTURES', a 'Dashboard' link, and a 'My Account' link. Below this is a search bar and a 'Contact Support' link. A secondary navigation bar lists categories: 'Vitamins & Supplements', 'Homeopathic Remedies', 'Herbs', 'Animal Health', and 'Acupuncture & Oriental Medicine'. The main content area features a product card for 'Rescue Gum 17 pieces' by Bach Flower Remedies. The product image shows a yellow box of 'RESCUE GUM'. To the right of the product card, there is a 'Description' section with a bulleted list of benefits: 'For relief of occasional stress.', '-Courage of presence of mind', '-focus when ungrounded', '-patience with problems and people', '-balanced mind when losing control', and '-softens impact of shock'. Below the description are three tabs: 'Ingredients', 'Suggested Usage', and 'Notes'. The 'Ingredients' tab is active, showing the following text: 'Each 5X (HPUS) Helianthemum nummularium, Clematis vitalba, Impatiens glandulifera, Prunus cerasifera, Ornithogalum umbellatum. Inactive Ingredients: Isomalt, Gum Base (with Tocopherol), Sorbitol, Maltitol, Mannitol, Glycerine, Xylitol, Gum Arabic, Natural Flavor (Elderflower and Orange), Titanium Dioxide, Soya Lecithin, Citric Acid, Malic Acid, Carnauba Wax, Carboxymethylcellulose, Beta Carotene.' On the right side of the product card, there are fields for 'Wholesale Price: \$', 'Retail Price: \$', and 'Quantity:'. Below these are two buttons: 'Add to Cart' and 'Add to Patients'.

Exhibit 5:

HELLO, NICO VENTURES [Dashboard](#) [My Account](#)

natural partners

Customer Service (888) 633-7620 Monday - Friday 6:30 am - 6:00 pm AZ Time

[Vitamins & Supplements](#) | [Homeopathic Remedies](#) | [Herbs](#) | [Animal Health](#) | [Acupuncture & Oriental Medicine](#)

Home |

Homeofresh Gum Chlorophyll 10pk Item

Seroyal/Unda Wholesale Price Retail Price

Description:
Homeofresh Chewing Gum – Chlorophyll Flavor provides added protection for teeth and gums, when used in combination with Homeofresh Toothpaste. Studies have shown that dental caries, demineralization of tooth enamel and dental plaque are closely linked with a particular microbial flora in the mouth. The common diet, especially rich in refined fermentable sugars, establishes an environment for poor dental health. Homeofresh Chewing Gum is free of these cariogenic sugars and prevents the acidifying effect of bacteria on tooth enamel when used after meals. Xylitol, an inhibitor of the cavity-causing bacteria streptococcus mutans, is a natural sweetener derived from birch tree bark. Xylitol halts tooth decay, inhibits the formation of dental plaque and remineralizes tooth enamel. Homeofresh Chewing Gum is indicated for dental hygiene, bleeding and receding gums, and for the prevention of dental caries, plaque buildup and periodontal disease; and can be used as a substitute when brushing is not possible.

Ingredients | **Suggested Usage** | **Notes**

Formula: Calendula officinalis (Calendula), Hypericum perforatum (St. John's Wort), Xylitol, Natural alpha-Bisabolol, Chlorophyll (Alfalfa)