

ESTTA Tracking number: **ESTTA543463**

Filing date: **06/17/2013**

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	Mr.DanielMorales
Granted to Date of previous extension	06/19/2013
Address	329 W. Altadena Dr. Altadena, CA 91001 UNITED STATES

Attorney information	Wendy Peterson Not Just Patents LLC PO Box 18716 Minneapolis, MN 55418 UNITED STATES wsp@NJPLS.com
----------------------	---

Applicant Information

Application No	85581570	Publication date	02/19/2013
Opposition Filing Date	06/17/2013	Opposition Period Ends	06/19/2013
Applicants	Bower, Lisa 31455 Shimmins Ridge Road Willits, CA 94590 UNITED STATES Mellins, David 2018 Allston Way Berkeley, CA 94704 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Tea-based beverages
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	No Bona Fide Intent to Use under Trademark Act 1(b), Commodore Electronics Ltd. v. CBM Kabushiki Kaisha

Mark Cited by Opposer as Basis for Opposition

U.S. Application	85957675	Application Date	06/12/2013
------------------	----------	------------------	------------

No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALKEMI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: Tea; Tea-based beverages		

Attachments	Notice of Opposition with Exhibit.pdf(473984 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	/Wendy Peterson/
Name	Wendy Peterson
Date	06/17/2013

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

Opposition Proceeding [Not Assigned]

In the matter of Trademark Application No. 85581570

For the mark: **ALKEMI**

Published for Opposition Date: February 19, 2013

Daniel Morales, Opposer

v.

David Mellins & Lisa Bower, Applicants

NOTICE OF OPPOSITION

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. On 02/27/2013, Opposer timely filed an Extension of Time to file a Notice of Opposition against the above-identified application. Opposer through its counsel now timely files its Notice of Opposition before the expiration of the extension period on 06/19/2013.

Based upon information and belief, Opposer avers it will be damaged by the registration of the opposed mark and asks the Board to sustain the opposition in favor of the Opposer.

Opposer also submits that actions by Applicant thwart the intent to use provisions set forth by Congress by reserving rights in the mark and using the system to traffic in marks. The

public also has a right not to be confused by the identical trademarks for ALKEMI and Opposer asks the Board to sustain the opposition also for the public's benefit.

1. **Standing.** Opposer would be a competitor of Applicant if Applicant were selling teas with the subject application being constructive notice of their intent. Opposer uses the mark/trade name ALKEMI in the same and related markets and uses or intends to use under: Alkemi, Alkemi Tea, Alkemi Fest, Alkemi Labs, Alkemi Pro, and Alkemi Yoga.
2. **Additional Standing.** Opposer has a pending trademark application SN 85957675 (see Exhibit A) for that is reasonably expected to be refused because of a likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d) because of a likelihood of confusion with the subject pending application. Opposer has standing under *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953 (TTAB 2008).
3. **Opposer's Priority.** Opposer claims prior common law rights under the mark/trade names ALKEMI and ALKEMI TEA.
4. **Opposer's mark/trade name is Protectable.** Opposer's marks/trade names ALKEMI and ALKEMI TEA are inherently distinctive.
5. Opposer's marks/trade names ALKEMI and ALKEMI TEA operate as a source identifier for Opposer's goods and services.
6. Opposer's marks/trade names ALKEMI and ALKEMI TEA should be given a broad scope of protection based on the inherent distinctiveness and priority of use.
7. Opposer's trade names ALKEMI and ALKEMI TEA have been in use to describe their research efforts for developing teas since December 2011. Selling teas would be a natural and obvious expansion of the business.

8. **Applicants.** Applicants David Mellins and Lisa Bower submitted an intent to use application and are attempting to register the word mark ALKEMI for *Tea-based beverages*.
9. **Lack of Bona Fide Intent-to-Use Grounds.** Upon information and belief Applicants did not have a bona fide intention to use the mark in commerce on the specified goods when they filed this application covering ALKEMI for the goods specified therein under Trademark Act § 1(b), 15 U.S.C. § 1052(b). *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1506 (TTAB 1993).
10. Upon information and belief Applicants have not offered the goods listed in the application for sale to the public under the involved mark, ALKEMI.
11. Upon information and belief Applicants have no documents sufficient to show actual or planned promotional expenditures under the mark for ALKEMI for the goods listed.
12. Upon information and belief Applicants have no documents concerning trade shows, conventions, seminars and other events open to the public at which the listed goods sold or were offered for sale under the ALKEMI mark were or are planned to be displayed.
13. Upon information and belief there is no projected date of first use in commerce for the goods listed under the mark ALKEMI.
14. **Likelihood of Confusion Grounds.** Applicants' word mark ALKEMI and Opposer's word mark ALKEMI are identical and the goods are identical.
15. Neither parties' description of the goods have restrictions as to the intended channels of trade.
16. The parties' goods are identical and intended and assumed to be in the same channels of trade and intended and assumed to be for the same class of purchasers.

17. The marks are likely to be confused under 15 U.S.C. §1052(d).
18. Identical trademarks for identical goods or services lead to inevitable confusion.
19. The public interest is the dominant interest and served by removing marks that cause inevitable confusion from the register. See, e.g., *Swank, Inc. v. Ravel Perfume Corp.*, 438 F.2d 622, 58 CCPA 948 (1971); *Chum King Corp. v. Genii Plant Line, Inc.*, 403 F.2d 274, 56 CCPA 740 (1968); *Cohen & Sons Co., Inc. v. Hearst Magazines, Inc.*, 220 F.2d 763, 42 CCPA 836 (1955); see also *In re Avedis Zildjian Co.*, 394 F.2d 860, 55 CCPA 1126 (1968); *In re Continental Baking Co.*, 390 F.2d 747, 55 CCPA 967 (1968).

Inasmuch as the issuance of a federal registration for Applicant thwart the intent to use provisions set forth by Congress by reserving rights in the mark and using the system to traffic in marks and will harm Opposer's rights and the public interest, Opposer respectfully requests that this registration be denied and that the Opposition is sustained in favor of Opposer. .

Submitted By: /Wendy Peterson/

Date: June 17, 2013

Wendy Peterson, Attorney for Opposer, Daniel Morales

Not Just Patents LLC
PO Box 18716
Minneapolis, MN 55418
(651) 500-7590; wsp@NJPLS.com

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2013, the foregoing was served upon Applicant's attorney by first class mail (and by email as a courtesy) to:

BRUCE RAMSEY

RAMSEY LAW GROUP

250 LAFAYETTE CIR STE 200

LAFAYETTE, CA 94549-7602

By: /Wendy Peterson/

Date: June 17, 2013

Wendy Peterson, Attorney for Opposer, Daniel Morales

Exhibit A

The USPTO is pleased to report that the TSDR problem with the display of mark images has been resolved. Please clear your individual browser cache prior to accessing TSDR. If you continue to experience technical difficulties, **please email**.

STATUS

DOCUMENTS

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2013-06-17 09:32:20 EDT

Mark: ALKEMI

ALKEMI

US Serial Number: 85957675

Application Filing Date: Jun. 12, 2013

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date

Status Date: Jun. 15, 2013

Mark Information

Mark Literal Elements: ALKEMI

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Translation: The English translation of alkemi in the mark is alchemy.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of intent to use;
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Tea; Tea-based beverages

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(b)

Used Anywhere in Another Form: The mark was first used anywhere in a different form other than that sought to be registered at least as early as 11/11/2011

Used in Commerce in Another Form: The mark was first used in commerce in a different form registered at least as early as 11/11/2011

Basis Information (Case Level)

Filed Use: No	Currently Use: No
Filed ITU: Yes	Currently ITU: Yes
Filed 44D: No	Currently 44D: No
Filed 44E: No	Currently 44E: No
Filed 66A: No	Currently 66A: No
Filed No Basis: No	Currently No Basis: No

Current Owner(s) Information

Owner Name: Morales, Daniel

Owner Address: 329 W. Altadena Dr.
Altadena, CALIFORNIA 91001
UNITED STATES

Legal Entity Type: INDIVIDUAL **Citizenship:** UNITED STA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Wendy Peterson

Attorney Primary Email wsp@NJPLS.com **Attorney Email Authorized:** Yes

Address:

Correspondent

Correspondent Name/Address: WENDY PETERSON
NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS, MINNESOTA 55418
UNITED STATES

Phone: (651) 500-7590

Correspondent e-mail: wsp@NJPLS.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jun. 15, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Jun. 15, 2013

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load