

ESTTA Tracking number: **ESTTA558941**

Filing date: **09/11/2013**

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	Insight Pharmaceuticals, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	900 Northbrook Corporate Center Suite 200 Trevose, PA 19053 UNITED STATES		

Correspondence information	MICHELINE KELLY JOHNSON BAKER, DONELSON, ET AL. 633 CHESTNUT ST., STE 1800 CHATTANOOGA, TN 37450 UNITED STATES trademarks@bakerdonelson.com,asanders@bakerdonelson.com,mjohanson@bakerdonelson.com		
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Applicant Information

Application No	85883894	Publication date	08/27/2013
Opposition Filing Date	09/11/2013	Opposition Period Ends	09/26/2013
Applicant	Growstone, Inc. P.O. Box 498038 Cincinnati, OH 45249 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Insect barrier in the nature of a granular repellant for burrowing pest control
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1691138	Application Date	01/25/1991
Registration Date	06/09/1992	Foreign Priority Date	NONE
Word Mark	NIX		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1985/06/06 First Use In Commerce: 1985/06/06 pediculicide

Attachments	CHATDOCS-#665620-v1-GNAT_NIX_Opposition.pdf(95202 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	/micheline kelly johnson/
Name	MICHELINE KELLY JOHNSON
Date	09/11/2013

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

INSIGHT PHARMACEUTICALS, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.: _____
)	
GROWSTONE, INC.)	Serial No. 85/883894
)	
Applicant.)	

NOTICE OF OPPOSITION

Insight Pharmaceuticals, LLC (“Opposer”), a Delaware limited liability company, with a principal place of business located at 900 Northbrook Corporate Center, Suite 200, Trevose, Pennsylvania 19053, believes that it would be damaged by registration of the mark GNAT NIX shown in U.S. Trademark Application Serial No. 85/883,894 (the “Application”) filed on March 22, 2013 by Growstone, Inc. (the “Applicant”) and published for opposition on August 27, 2013. Accordingly, Opposer hereby opposes registration of said mark pursuant to Section 2(d) of the Lanham Act.

To the best of Opposer’s knowledge, the name and address of the current owner of the Application is Growstone, Inc., an Ohio corporation with an address of record at P.O. Box 498038, Cincinnati, Ohio 45249.¹

As grounds for this Opposition, Opposer alleges that:

¹ Opposer notes that although the Application states Growstone, Inc. is incorporated in Ohio, the Ohio Secretary of State does not appear to list Applicant as an Ohio Corporation. On the other hand, Applicant does appear to be registered as a Delaware corporation, as of December 14, 2007.

1. Opposer is the owner of the registered and common-law trademarks for, among other marks, NIX for use in connection with a full line of pediculicide (anti-lice) products (collectively, the “NIX trademarks”). In particular, Opposer is the owner of U.S. Registration No. 1,691,138 for NIX in International Class 005 with a first use in commerce date of June 6, 1985 (the “‘138 Registration”).

2. The ‘138 Registration is valid and subsisting and remains in full force and effect as evidence of the validity thereof and of Opposer’s exclusive right to own and use the mark at issue in connection with the goods specified in the Registration.

3. Since at least as early as June 6, 1985, Opposer has used its NIX trademarks in connection with its products, sales of its products, and advertising and promotions of its products throughout the United States, including in New Mexico where, upon information and belief, the Applicant has a principle place of business. These products include anti-lice treating cream, lice combs, and lice control spray.

4. Opposer’s trademarks are distinctive in that they are inherently distinctive and/or have acquired secondary meaning. In particular, as a result of the significant resources and effort Opposer has invested selling and promoting its products bearing the NIX mark, the purchasing public has come to know, rely on, and recognize the goods of Opposer by the NIX trademarks. Opposer has established valuable goodwill in its NIX trademarks.

5. Opposer's NIX trademarks are famous pursuant to 15 U.S.C. § 1125.

6. Applicant filed an intent-to-use application for registration of GNAT NIX, Serial No. 85/883,894, for “Insect barrier in the nature of a granular repellant for burrowing pest control” in International Class 005.

7. Applicant's Mark is very similar to Opposer's NIX trademark in appearance and commercial impression, in that they both contain the word NIX, and both are used to control and/or eliminate insects.

8. If the mark in the Application is permitted to register, the existence of such registration and use of GNAT NIX pest control products by the Applicant will likely cause confusion, mistake, or deception in the minds of consumers as to the source or origin of any insect control goods sold under the NIX or GNAT NIX marks, in violation of Section 2(d) of the Lanham Act. Consumers might reasonably believe that GNAT NIX is an extension of Opposer's product line.

9. If Applicant is permitted to register the GNAT NIX mark, consumer confusion resulting in damage to Opposer would result from the similarity between Applicant's mark and Opposer's NIX trademarks. Persons familiar with Opposer's NIX trademarks would be likely to purchase Applicant's goods as goods associated with Opposer. Furthermore, any defect or deficiency found with Applicant's goods marketed under Applicant's mark would reflect negatively upon and seriously injure the reputation that Opposer has established for its goods.

10. The Applicant's registration and use of GNAT NIX for pest control products also is likely to dilute the distinctive quality of Opposer's NIX trademarks.

11. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to the use of Applicant's mark. Such registration would be a source of damage and injury to Opposer.

12. This Opposition was served upon counsel for the Applicant via First Class Mail Delivery on September 11, 2013. A certification by Opposer's counsel of this service is located below.

WHEREFORE, Petitioner prays that, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, U.S. Trademark Application Serial Nos. 85/883,894 be denied in its entirety.

Petitioner hereby appoints Micheline Kelly Johnson to prosecute this Opposition and transact all business in the Trademark Trial and Appeal Board in connection therewith.

Please send all correspondence to the attention of:

Micheline Kelly Johnson
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450
(423) 209-4103 (office)
(423) 752-9548 (fax)

Respectfully submitted,

Dated: September 11, 2013

/Micheline Kelly Johnson/_____

Micheline Kelly Johnson
Attorney for Opposer Insight Pharmaceuticals, LLC
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.

1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450
(423) 209-4103 (office)
(423) 752-9548 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via First Class Mail, on this 11 day of September 2013 to the following:

Growstone, Inc.
P.O. Box 498038
Cincinnati, Ohio 45249

C. John Brannon
Brannon Sowers & Cracraft PC
1 North Pennsylvania Street, Suite 800
Indianapolis, Indiana 46204

/Micheline Kelly Johnson/
Micheline Kelly Johnson