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Filing date: **10/18/2013**

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

Proceeding	91212424
Party	Defendant Growstone, Inc.
Correspondence Address	Patricia A. Hughel Brannon Sowers & Cracraft PC 1 North Pennsylvania Street, Suite 800 Indianapolis, IN 46204 docket@bscattorneys.com
Submission	Answer
Filer's Name	C. John Brannon
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Date	10/18/2013
Attachments	91212424-Answer.pdf(359611 bytes)

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

INSIGHT PHARMACEUTICALS, LLC)	
Registrant,)	
)	Opposition No. 91212242
v.)	Serial No. 85/883894
)	
GROWSTONE, INC.)	
Applicant.)	

APPLICANT’S ANSWER

Applicant, Growstone, Inc. (“Applicant” or “Growstone”), through its undersigned counsel, hereby answers the Notice of Opposition of Insight Pharmaceuticals, LLC (“Opposer”).

Applicant answers the numbered allegations of the Notice of Opposition as follows:

1. Applicant admits that the U.S. Trademark online database records for U.S. Registration No. 1,691,138, for the mark “NIX” shows the last known owner for the registered mark to be Opposer and that the goods are listed as “pediculicide” in International Class 005. Applicant does not have sufficient information or knowledge to form a belief as to the truth of Opposer’s alleged first use in commerce, and therefore denies the allegation.
2. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies the allegations.
3. Applicant admits that Applicant’s principal place of business is located in New Mexico. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 3, and therefore denies the allegations.
4. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies the allegations.

5. Applicant denies the allegations contained in paragraph 5. Applicant further affirms that Opposer's mark is not famous pursuant to 15 U.S.C §1125 because, *inter alia*, upon information and belief numerous third parties have registered marks that contain "NIX," both in International Class 005 and other classes. See attached exhibit A.
6. Applicant admits the allegations contained in paragraph 6.
7. Applicant denies the allegations contained in paragraph 7. Applicant further affirmatively alleges that its mark is not similar for Opposer's mark. Applicant's mark clearly indicates the purpose of its use, which is not similar to Opposer's goods, which upon information and belief, is specifically listed as a "pediculicide," or a lice exterminating agent. Opposer's listing of goods does not include exterminating any other type of insect, or repelling any insects at all.
8. Applicant denies the allegations contained in paragraph 8. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the "NIX" portion which, upon information and belief, has been used and registered by other third parties in the IC 005 class. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant. Any trademark or service mark rights that Opposer may have are narrowly circumscribed to the goods and services indicated and any other use would not lead to a likelihood of confusion.
9. Applicant denies the allegations contained in paragraph 9. Applicant further affirmatively alleges that there is no damage resulting from consumer confusion to

Opposer's mark by the registration of Applicant's mark. Applicant's mark relates to a particulate glass product used to repel gnats, that is placed in the environment (typically in soil) and not applied or placed on a person, whereas upon information and belief, Opposer's mark relates to goods in the form of a shampoo, topical ointment, or the like that is applied directly on a person for *ex post facto* extermination of lice, on their body.

10. Applicant denies the allegations contained in paragraph 10.
11. Applicant denies the allegations contained in paragraph 11.
12. Applicant admits the allegations contained in paragraph 12.

AFFIRMATIVE DEFENSES

13. Upon information and belief, Insight has failed to police third-party uses of the term "NIX" for goods contained within IC 005 and therefore has lost any alleged trademark rights it may have possessed in the term. See exhibit A.

WHEREFORE, having fully answered the Notice of Opposition, Applicant prays that the Opposition be dismissed, with prejudice, and for such other and further relief as the Trademark Trial and Appeal Board may deem just and proper.

Dated this 18th day of October, 2013.

Respectfully submitted,

/C. John Brannon/
C. John Brannon
Attorney for Applicant
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served on the Registrant by causing a copy to be deposited with the United States Postal Service on the 18th day of October, 2013, via first class mail, postage prepaid to Registrant's attorney:

Micheline Kelly Johnson
Baker, Donelson, Et Al.
633 Chestnut St., Ste. 1800
Chattanooga, TN 37450

/C. John Brannon /

C. John Brannon



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NixPain

Word Mark	NIXPAIN
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85958953
Filing Date	June 13, 2013
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	November 12, 2013
Owner	(APPLICANT) BioLyte Laboratories, LLC LIMITED LIABILITY COMPANY MICHIGAN 3520 Roger B. Chaffee Drive SE Grand Rapids MICHIGAN 49548
Attorney of Record	Gerald P. Nehra
Type of Mark	TRADEMARK
Register	PRINCIPAL



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Exhibit A

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NIX-IT

Word Mark NIX-IT
Goods and Services IC 001. US 001 005 006 010 026 046. G & S: Anti-wetting paint; Hydrophobic paint; Water repellant coating; Water repellant paint; Ice-repellant paint; Anti-icing paint; Oil repellant treatment; Oil repellant paint
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86061000
Filing Date September 10, 2013
Current Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) Materials Modification Inc. CORPORATION VIRGINIA K 2809 Merrilee Dr. Fairfax VIRGINIA 22031
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE



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RAW NIX

Word Mark RAW NIX

Goods and Services IC 009. US 021 023 026 036 038. G & S: Digital media, namely, CD, phonographic records, and downloadable audio files featuring music

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85755133

Filing Date October 16, 2012

Current Basis 1B

Original Filing Basis 1B

Published for Opposition October 1, 2013

Owner (APPLICANT) Wise, Joel INDIVIDUAL UNITED STATES 1A 288 RT. 46 West Great Meadows NEW JERSEY 07838

Type of Mark TRADEMARK

Register PRINCIPAL

Other Data The name "RAW NIX" does not identify a living individual.

Live/Dead indicator LIVE

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MYNIXPIX

Word Mark MYNIXPIX

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer software for organizing and viewing digital images and photographs; Computer software for processing digital images; Computer software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information; Digital photo frames for displaying digital pictures, video clips and music; Electronic advertisement and messaging display unit with multi-networking (TCP/IP) capabilities and remote connectivity; Electronic LCD advertisement display unit with multi-networking (TCP/IP) capabilities; Viewing devices, namely, digital photograph viewers, 3D digital photograph viewers, underwater digital photograph viewers, underwater 3D digital photographs viewers, underwater LCD displays, underwater enclosures for LCD displays and underwater enclosures for video players

IC 035. US 100 101 102. G & S: Advertising and commercial information services, via the internet; Dissemination of advertising for others via the Internet; Online advertising via a computer communications network

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85710613



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NIX N' EASY

Word Mark NIX N' EASY

Goods and Services IC 009. US 021 023 026 036 038. G & S: Digital photo frames for displaying digital pictures, video clips and music. FIRST USE: 20100712. FIRST USE IN COMMERCE: 20100712

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code LETS-1 N A single letter, multiples of a single letter or in combination with a design NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

Serial Number 85083245

Filing Date July 13, 2010

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 2, 2010

Registration Number 3908144



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NIX

Word Mark	NIX
Goods and Services	IC 009. US 021 023 026 036 038. G & S: (Based on Use in Commerce) Digital photo frames for displaying digital pictures, video clips and music (Based on 44(e)) Digital photo frames for displaying digital pictures, video clips and music. FIRST USE: 20090716. FIRST USE IN COMMERCE: 20090716
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	LETTER-3-OR-MORE NIX Combination of three or more letters as part of the mark
Serial Number	85054564
Filing Date	June 4, 2010
Current Basis	1A;44E
Original Filing Basis	1A;44E
Published for Opposition	November 2, 2010



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MoxNix

Word Mark MOXNIX
Goods and Services IC 025. US 022 039. G & S: T-shirts. FIRST USE: 20130122. FIRST USE IN COMMERCE: 20130122
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85906056
Filing Date April 16, 2013
Current Basis 1A
Original Filing Basis 1A
Published for Opposition September 10, 2013
Owner (APPLICANT) Parks, John J INDIVIDUAL UNITED STATES 6050 Peachtree Pkwy, Suite 240-174 Norcross GEORGIA 30092
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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