

ESTTA Tracking number: **ESTTA579701**

Filing date: **01/02/2014**

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	LiveAnew, Inc.
Granted to Date of previous extension	01/01/2014
Address	3050 Key Harbour Drive St. Louis, MO 63367 UNITED STATES
Correspondence information	Rachel L. Carnaggio Attorney of Record HolzerIPLaw, PC 216 16th Street Suite 1350 Denver, CO 80202 UNITED STATES rcanaggio@holzeriplaw.com Phone:720-204-3234

Applicant Information

Application No	85759134	Publication date	09/03/2013
Opposition Filing Date	01/02/2014	Opposition Period Ends	01/01/2014
Applicant	LiveAnew, LLC 1801 Congressional Circle Austin, TX 78746 TX		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Healthcare products for use by adults, namely, adult diapers, incontinence pads, incontinence garments

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.	3677402	Application Date	04/17/2008
Registration Date	09/01/2009	Foreign Priority Date	NONE
Word Mark	LIVEANEW		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 038. First use: First Use: 2009/02/01 First Use In Commerce: 2009/02/01 Providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning retirement and retirement transition issues related to entering retirement life or significant change of life and all non-financial aspects of retirement</p> <p>Class 041. First use: First Use: 2009/02/01 First Use In Commerce: 2009/02/01 Life coaching services and personal coaching services in the field of entering retirement life or significant change of life and all non-financial aspects of retirement; Providing educational mentoring services and programs in the field of retirement and retirement transition; Providing information, news and commentary in the field of recreation and leisure activities for individuals entering retirement</p> <p>Class 042. First use: First Use: 2009/02/01 First Use In Commerce: 2009/02/01 Hosting an online community web site featuring retirement and retirement transition information regarding life at retirement</p>

Attachments	77450683#TMSN.jpeg(bytes) 2013-01-02_Notice-of-Opposition.pdf(52516 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	/Rachel L. Carnaggio/
Name	Rachel L. Carnaggio
Date	01/02/2014

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

<p>LIVEANEW, INC. Opposer,</p> <p>v.</p> <p>LIVEANEW, LLC Applicant.</p>	<p>In re Matter of Trademark Application</p> <p>Mark: LIVEANEW</p> <p>Serial No. 85/759134</p> <p>Filing Date: October 19, 2012</p> <p>Publication Date: September 3, 2013</p>
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NOTICE OF OPPOSITION

LiveAnew, Inc., a Missouri corporation, located and doing business at 3050 Key Harbour Drive, Lake St. Louis, Missouri 63367 (hereinafter, "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 85/759,134, filed by LiveAnew, LLC (hereinafter, "Applicant") on October 19, 2012, and hereby opposes the same.

As grounds for opposition, Opposer states as follows:

1. Applicant filed a Section 1(b) intent-to-use application assigned Application Serial No. 85/759,134 (the "Application") in the United States Patent and Trademark Office on October 19, 2012. Applicant seeks to register the mark LIVEANEW for use in connection with the following goods/services:

IC 005. US 006 018 044 046 051 052. G & S: Healthcare products for use by adults namely, adult diapers, incontinence pads, incontinence garments.

2. Opposer is a well-known provider of goods/services to retirement age consumers. Opposer has used the mark LIVEANEW on and in connection with goods/services related to the retirement age community as early as February 1, 2009, and

long before the intent-to-use Application herein opposed. Opposer's services, which include those related to significant change of life issues and "non-financial aspects" of retirement consumers, are marketed and sold over the internet.

3. Opposer is the owner of the mark LIVEANEW and the valid U.S. Registration No. 3,677,402 for the mark LIVEANEW, registered September 1, 2009, for the following goods/services:

IC 038. US 100 101 104. G & S: Providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning retirement and retirement transition issues related to entering retirement life or significant change of life and all non-financial aspects of retirement.

IC 041. US 100 101 107. G & S: Life coaching services and personal coaching services in the field of entering retirement life or significant change of life and all non-financial aspects of retirement; Providing educational mentoring services and programs in the field of retirement and retirement transition; Providing information, news and commentary in the field of recreation and leisure activities for individuals entering retirement.

IC 042. US 100 101. G & S: Hosting an online community web site featuring retirement and retirement transition information regarding life at retirement.

4. The mark LIVEANEW has been identified with Opposer and has appeared on a tremendous amount of advertising and marketing materials. Opposer, by virtue of extensive usage, advertising, and promotion, has built a very high level of consumer and trade recognition symbolized by its mark LIVEANEW. Due to extensive public exposure to, and awareness by, consumers and the trade, the mark LIVEANEW has acquired and possesses an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source of goods/services of high quality for retirement age consumers.

5. Opposer has priority over Applicant because its use, application filing date, and/or registration date for the mark LIVEANEW long precede Applicant's filing date for its intent-to-use application by Applicant for the LIVEANEW mark.

6. Applicant's mark LIVEANEW has been and is confusingly similar, in appearance, sound, and meaning to Opposer's identical, registered LIVEANEW mark. Opposer has received correspondence of actual confusion from consumers contacting Opposer specifically regarding incontinence products.

7. The two identical marks are used in association with related goods/services, and upon information and belief, are marketed through the same

substantial marketing and advertising channel. The identical marks have and will continue to cause confusion or cause source confusion to the same classes of purchasers (i.e., retirement age consumers, and potentially unsophisticated consumers).

8. Opposer's customer base and the general public has been, and is likely to be, confused, mistaken, or deceived as to the origin and sponsorship of Applicant's proposed goods/services, and misled into believing that such goods/services emanate from, are licensed by, or are in some way directly or indirectly associated with, approved by, or sponsored by Opposer. Such confusion irreparably harms and damages Opposer because Opposer has not control over the nature or quality of the goods/services provided or produced by Applicant under the LIVEANEW mark.

9. For the foregoing reasons, Opposer believes that it would be damaged by the registration of Applicant's LIVEANEW mark.

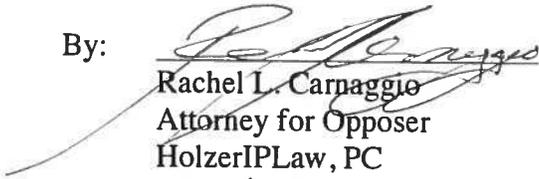
WHEREFORE, Opposer respectfully requests that Application Serial No. 85/759,134 be rejected, and that registration of the mark LIVEANEW be refused.

Respectfully submitted,

LIVEANEW, INC.

Date: January 2, 2014

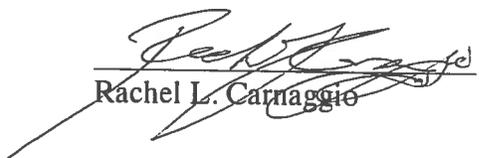
By:


Rachel L. Carnaggio
Attorney for Opposer
HolzerIPLaw, PC
216 16th Street, Suite 1350
Denver, Colorado 80203

CERTIFICATE OF SERVICE

I, Rachel L. Carnaggio, attorney at HolzerIPLaw, P.C., hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant, this 2nd day of January, 2014, by sending same via First Class mail, postage prepaid, to the following:

Jonathan Lass
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701


Rachel L. Carnaggio