

ESTTA Tracking number: **ESTTA601699**

Filing date: **05/01/2014**

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	Nicopure Labs, LLC
Granted to Date of previous extension	05/07/2014
Address	231 West Parkway Pompton Plains, NJ 07444 UNITED STATES

Correspondence information	Nicopure Labs, LLC 231 West Parkway Pompton Plains, NJ 07444 UNITED STATES ingber.law@verizon.net
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### Applicant Information

Application No	86038902	Publication date	01/07/2014
Opposition Filing Date	05/01/2014	Opposition Period Ends	05/07/2014
Applicant	Axcentria Pharmaceuticals, LLC 306 Keystone Drive Telford, PA 18969 UNITED STATES		

### Goods/Services Affected by Opposition

Class 001. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Nicotine based liquid used to refill electronic cigarettes
Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; chemical flavorings in liquidform used to refill electronic cigarettes sold separately from the cartridges

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4458857	Application Date	05/15/2013
Registration Date	12/31/2013	Foreign Priority Date	NONE

Word Mark	NICOPURE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2010/10/28 First Use In Commerce: 2010/10/28 Chemical flavorings in liquid form used to refill electronic cigarette cartridges

U.S. Registration No.	4342014	Application Date	09/24/2012
Registration Date	05/28/2013	Foreign Priority Date	NONE
Word Mark	NICOPURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2010/10/28 First Use In Commerce: 2010/11/01 Nicotine based liquid used to refill electronic cigarettes		

U.S. Application No.	86081031	Application Date	10/02/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NICOPURE LABS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2010/11/01 First Use In Commerce: 2010/11/01 Nicotine based liquid used to refill electronic cigarettes Class 030. First use: First Use: 2010/11/01 First Use In Commerce: 2010/11/01 Chemical flavorings in liquid form used to refill electronic cigarette cartridges

Attachments	85933263#TMSN.jpeg( bytes ) 85736704#TMSN.jpeg( bytes ) 86081031#TMSN.jpeg( bytes ) TRIDENT NICOPREMIA OPPOSITION.pdf(93822 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	/Mark J. Ingber/
Name	Nicopure Labs, LLC
Date	05/01/2014

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

<b>IN RE APPLICATION OF:</b> <b>Axcentria Pharmaceuticals, LLC</b> <b>SERIAL NO: 86/038902</b> <b>FILED: August 15, 2013</b> <b>MARK: NICOPREMIA</b>	<b>CLASSES: 1, 30</b>  <b>PUBLISHED: January 1, 2014</b>
<b>Nicopure Labs, LLC</b>  <p style="text-align: center;"><b>Opposer,</b></p> <p style="text-align: center;"><b>vs.</b></p> <b>Axcentria Pharmaceuticals, LLC</b>  <p style="text-align: center;"><b>Applicant.</b></p>	<b>OPP. NO:</b>
<b>TO: TRADEMARK TRIAL AND APPEAL BOARD</b> U.S. Patent and Trademark Office P.O. Box 1451 Alexandria, VA 22313-1451	

**NOTICE OF OPPOSITION**

**A. Identification of Opposer:**

1. Opposer is Nicopure Labs, LLC, a New Jersey limited corporation with a principal place of business at 231 West Parkway, Pompton Plains, NJ 07444.
2. Opposer is the owner of U.S. Trademark Registration No. 4,342,014, for the mark nicopure® issued May 28, 2013 as used since at least as early as 2010, in connection with nicotine based liquid used to refill electronic cigarettes in Class 1.
3. Opposer is the owner of U.S. Trademark Registration No. 4,458,857, for the mark nicopure® issued December 31, 2013 as used since at least as early as 2010, in connection with chemical flavorings in liquid form used to refill electronic cigarettes in Class 30.
4. Opposer is the owner of U.S. Application Serial No. 86/081031, for the mark nicopure labs filed October 2, 2013 as used since at least as early as 2010, in connection with nicotine based liquid used to refill electronic cigarettes in Class 1 and chemical flavorings in liquid form used to refill electronic cigarette cartridges in Class 30.
5. Applicant, Axcentria Pharmaceuticals, LLC, a Delaware Company, is the owner of U.S.

Trademark Application 86/038902 for the mark NICOPREMIA in connection with nicotine based liquid used to refill electronic cigarettes in Class 1 and cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; chemical flavorings in liquid form used to refill electronic cigarettes sold separately from the cartridges in Class 30. Said application is a '1B' or 'intent to use' application.

6. Opposer believes that it will be damaged by the grant of and registration of said NICOPREMIA mark in Classes 1 and 30 shown in the above referenced Application Ser. No. 86/038902, filed August 15, 2013, and hereby opposes the registration of such mark.
7. Opposer is submitting herewith as part hereof and marked Exhibit A, Certificate of Registration No. 4,342,014, for the mark nicopure® issued May 28, 2013.
8. Opposer is submitting herewith as part hereof and mark Exhibit B, Certificate of Registration No. 4,458,857, for the mark nicopure® issued December 31, 2013.
9. Opposer is submitting herewith as part hereof and mark Exhibit C, a TESS status report regarding Application Serial No. 86/081031, for the mark nicopure labs filed October 2, 2013.
10. There is no issue as to priority. Applicant's foregoing application is based upon an intent to use the NICOPREMIA mark.

B. Grounds for Opposition:

As grounds for opposition, it is alleged that:

11. Nicopure Labs, LLC ("Opposer") is presently engaged in and has been continuously engaged in manufacturing and distributing electronic cigarettes, vaporizers and the related refillable liquids ("e-liquids) in the United States since at least as early as 2010, which date is long prior to the filing by Applicant of its Application Ser. No. 86/038902 for the mark NICOPREMIA.
12. Opposer's Registration No. 4,342,014 for the mark nicopure® issued May 28, 2013.
13. Opposer's Registration No. 4,458,857 for the mark nicopure® issued December 31, 2013.
14. Opposer's Application Serial No. 86/081031, for the mark nicopure labs was filed October 2, 2013.
15. As a consequence of Opposer's continuous, substantial and widespread use of the nicopure® and nicopure labs marks, the trade and consuming public have come to know and associate Opposer's nicopure® and nicopure labs marks with Opposer's e-liquid products and having their source of origin from and originating with Opposer, such identification and association with Opposer having occurred prior to the August 15, 2013

filing date of Applicant's Application Ser. No. 86/038902.

16. Opposer has the exclusive right to use the nicopure® and nicopure labs marks marks for Opposer's goods and services.
17. The Trademark proposed for registration by the Applicant, namely, NICOPREMIA in Classes 1 and 30, is so confusingly similar in sight and sound to Opposer's Marks nicopure® and nicopure labs marks that there is a substantial likelihood of confusion amongst the consuming public. Moreover, Applicant's goods and services, as identified in its trademark application, are so strikingly similar to Opposer's goods that there is likely to be continued confusion therewith and mistaken therefore. The Applicant's mark is deceptively similar to Opposer's Registered Marks, so as to cause confusion and lead to deception as to the origin of Applicant's goods and services bearing Applicant's marks.
18. Moreover, the goods and services of Opposer and the services of Applicant are similar, are in similar channels of commerce, and are offered and/or will be offered to similar customers.
19. As a result of the confusing similarity between Opposer's Registered Marks and the Applicant's marks, and because the goods and services of Applicant and Opposer are similar, are in similar channels of commerce, and are directed to similar customers, registration of Applicant's NICOPREMIA mark in connection with Applicant's goods and services likely to continue to cause confusion and/or is likely to deceive the public as to the source or sponsorship of such services and thereby to damage Opposer.
20. Opposer would be damaged by the granting to Applicant of the registration of the NICOPREMIA mark for which registration is sought, because such mark, when applied to the services of Applicant, would:
  - a. Be likely to continue to cause confusion and to cause mistake and to deceive;
  - b. Falsely suggest a connection with Opposer;
  - c. Cause consumers of Applicant's goods and services offered in connection with the Applicant's mark to purchase Applicant's goods and services assuming that they were purchasing Opposer's goods and services;
  - d. Damage Opposer's valuable goodwill in its nicopure® and nicopure labs marks; and
  - e. Cause confusion in the trade which would inevitably result in the further loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods and services marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods and services under its Registered Marks.
  - f. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

21. By reason of the foregoing, Applicant is not entitled to the registration of the mark sought by its application Serial No. 86/038902 for the mark NICOPREMIA.

WHEREFORE, Opposer respectfully prays that:

- a. Applicant be required to answer this Notice of Opposition;
- b. Application Serial No. 86/038902 in International Classes 1 and 30 be rejected, and that the mark therein sought for the services herein specified in International Classes 1 and 30 be denied and refused.
- c. Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its Registrations which are annexed as an exhibit to this Notice of Opposition as evidence in support of this Notice of Opposition.
- d. The \$300 filing fee required in § 2.6(a)(17) is submitted herewith.
- e. Opposer be awarded such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

THE INGBER LAW FIRM

By: /Mark J. Ingber/  
Mark J. Ingber, Esq.

Dated: May 1, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing Notice of Opposition has been by First Class Mail, upon the following counsel of record of Applicant Axcentria Pharmaceuticals, LLC on this 1st day of May, 2014:

Gail Berritt, Esq.  
The Law Offices of Gail J. Berritt  
9 Berndale Drive  
Westport, CT 06880

/Mark J. Ingber/  
Mark J. Ingber

