

ESTTA Tracking number: **ESTTA660503**

Filing date: **03/11/2015**

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	Allmax Nutrition Inc.		
Entity	Corporation	Citizenship	Canada
Address	4576 Yonge Street Suite 509 North York, ON M2N 6N4 CANADA		

Attorney information	Sean L. Sweeney Tredecim LLC PO Box 9739 Portland, ME 04104 UNITED STATES sean@tredecimlaw.com Phone:207-221-6100		
----------------------	--	--	--

Applicant Information

Application No	86400546	Publication date	02/10/2015
Opposition Filing Date	03/11/2015	Opposition Period Ends	03/12/2015
Applicant	Universal Nutrients, LLC 14801 Sovereign Road Fort Worth, TX 76155 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2008/01/01 First Use In Commerce: 2008/01/01
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3722812	Application Date	04/13/2007
Registration Date	12/08/2009	Foreign Priority Date	NONE
Word Mark	ISOFLEX		

Design Mark	<h1>ISOFLEX</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/11/03 First Use In Commerce: 2004/11/03 Protein powdered drink mix, protein bars, and protein drinks used as meal replacements

Attachments	77155960#TMSN.png(bytes) Notice of Opposition.pdf(93718 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	/Sean L. Sweeney/
Name	Sean L. Sweeney
Date	03/11/2015

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

ALLMAX NUTRITION INC.,

Opposer,

v.

UNIVERSAL NUTRIENTS, LLC,

Applicant.

Serial No. **86/400,546**

Opposition No.

Mark: **ISO-PLEX**

Publication Date: **February 10, 2015**

NOTICE OF OPPOSITION

Allmax Nutrition Inc. (“Opposer”) believes that it will be damaged by the registration of the mark covered by Application Serial No. 86/400,546, (“Application”) filed on September 19, 2014, by Universal Nutrients, LLC (“Applicant”), and hereby opposes the registration of the mark.

Opposer is a corporation organized and existing under the laws of Canada and having a principal place of business at 4576 Yonge Street, Suite 509, North York, Ontario, Canada M2N-6N4.

Upon information and belief, Applicant is a Texas limited liability company, having a principal place of business at 14801 Sovereign Road, Fort Worth, Texas 76155.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register ISO-PLEX as a trademark for dietary and nutritional supplements, in international class 5.

2. The Application identifies a filing basis as use of the mark and alleges a first use anywhere on January 1, 2008, and a first use in commerce on January 1, 2008.

3. As reflected in the records of the United States Patent and Trademark Office, Opposer is the owner of U.S. Trademark Registration No. 3,722,812 for the mark ISOFLEX. Opposer's ISOFLEX registration issued on the Principal Register on December 8, 2009, for protein powdered drink mix, protein bars, and protein drinks used as meal replacements in International Class 5.

4. Opposer has continuously used the trademark ISOFLEX in United States commerce since at least as early as November 3, 2004, on or in connection with protein powdered drink mix, protein bars, and protein drinks used as meal replacements. Opposer's use has been valid and continuous since said date of first use and has not been abandoned.

5. Opposer's ISOFLEX registration was based on an application filed in the United States Patent and Trademark Office on April 13, 2007, which is a date prior to the filing date of the Application and a date prior to Applicant's claimed use.

6. Opposer's ISOFLEX registration is valid and subsisting and is prima facie evidence of Opposer's exclusive right to use the ISOFLEX mark in commerce on the goods specified in said registration.

7. Opposer has used its registered mark throughout the United States on or in connection with goods as identified in the registration and Opposer has developed valuable goodwill in respect to the mark ISOFLEX related to the goods in said registration.

8. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's ISO-PLEX mark so resembles

Opposer's registered ISOFLEX mark as to be likely to cause confusion, or to cause mistake or to deceive.

9. Opposer has used its ISOFLEX mark in United States commerce prior to any use by Applicant of the ISO-PLEX mark and Opposer filed its application for U.S. Registration No. 3,722,812 before Applicant filed the opposed Application. Thus, there is no issue of priority.

10. If the ISO-PLEX mark is permitted to register, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's ISO-PLEX mark and Opposer's ISOFLEX registration. Persons familiar with Opposer's mark would be likely to buy Applicant's goods as and for a good sold by Opposer. Any such confusion in trade inevitably would result in loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation Opposer has established for its goods sold under its mark.

11. If the ISO-PLEX mark is permitted to register, Applicant would obtain at least a prima facie exclusive right to the use of its ISO-PLEX mark. Such registration would continue to be a source of damage and injury to Opposer.

12. Opposer's ISOFLEX mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of Applicant's ISO-PLEX mark and the overlapping nature of the goods, it is alleged that Applicant's ISO-PLEX mark so resembles Opposer's ISOFLEX trade name previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer prays that the Application be rejected, and that the registration therein sought for the goods therein specified be denied and refused and not permitted to issue as a registration, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

ALLMAX NUTRITION INC.

Dated: March 11, 2015

By: /Sean L. Sweeney/

Sean L. Sweeney
Tredecim LLC
P.O. Box 9739
Portland, ME 04104
(207) 221-6100

Opposer's Attorney

CERTIFICATE OF SERVICE

I certify that this opposition was served on the applicant on March 11, 2015, by mailing a copy by first class mail, postage prepaid, to its attorney of record:

BAXTER W. BANOWSKY
BANOWSKY & LEVINE, P.C.
12801 N CENTRAL EXPY STE 1700
DALLAS, TEXAS 75243-1741

/Sean L. Sweeney/
Sean L. Sweeney