

ESTTA Tracking number: **ESTTA707559**

Filing date: **11/09/2015**

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	Threshold Enterprises Ltd.
Granted to Date of previous extension	11/08/2015
Address	23 Janis Way Scotts Valley, CA 95066 UNITED STATES

Attorney information	Erica Connolly Arnold & Porter LLP Three Embarcadero Center 10th Floor San Francisco, CA 94111 UNITED STATES trademarkdocketing@aporter.com, erica.connolly@aporter.com, monty.agarwal@aporter.com, bryan.gresham@aporter.com Phone:(415) 471-3100
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Applicant Information

Application No	86337275	Publication date	05/12/2015
Opposition Filing Date	11/09/2015	Opposition Period Ends	11/08/2015
Applicant	PEACE WELLNESS NUTRACEUTICALS LLC 7600 N. 15th Street, Suite 102 Phoenix, AZ 85020 UNITED STATES		

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: Dietary and nutritional supplements; nutraceuticals for use as a dietary supplement; Nutritional supplements

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.	1965003	Application Date	05/12/1994
Registration Date	04/02/1996	Foreign Priority Date	NONE
Word Mark	WELLNESS FORMULA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1984/07/01 First Use In Commerce: 1984/07/01 vitamins, dietary herbal supplements and nutritional supplements

U.S. Registration No.	3933241	Application Date	03/06/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE

Word Mark	WELLNESS FIZZ
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2007/02/19 First Use In Commerce: 2007/02/19 dietary supplements, nutritional supplements, food supplements and herbal supplements
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U.S. Registration No.	3073471	Application Date	04/05/2005
Registration Date	03/28/2006	Foreign Priority Date	NONE

Word Mark	WELLNESS SHOTS
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 Dietary Supplement

U.S. Registration No.	4405519	Application Date	05/17/2012
Registration Date	09/24/2013	Foreign Priority Date	NONE

Word Mark	WELLNESS SHOT
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 Dietary supplements

U.S. Registration No.	4386422	Application Date	05/17/2012
Registration Date	08/20/2013	Foreign Priority Date	NONE

Word Mark	WELLNESS ON THE GO
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2012/03/09 First Use In Commerce: 2012/03/19 Dietary supplements

Attachments	77685678#TMSN.png(bytes) 78601833#TMSN.png(bytes) 85628552#TMSN.png(bytes) 85628585#TMSN.png(bytes)
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	Threshold--PEACE WELLNESS--Notice of Opposition (No. 86337275).pdf(34768 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	/Erica Connolly/
Name	Erica Connolly
Date	11/09/2015

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

In the matter of trademark application Serial No. 86/337,275
Filed July 15, 2014

The logo features the word "PEACE" in a large, serif font with a stylized globe behind it, and the word "WELLNESS" in a smaller, sans-serif font below it.
Mark

Published in the Official Gazette on May 12, 2015

Threshold Enterprises Ltd.,)	
)	
Opposer,)	
)	Opposition No. _____
vs.)	
)	
Peace Wellness Nutraceuticals)	
LLC,)	
)	
Applicant.)	
)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

In the matter of U.S. Trademark Application Serial No. 86/337,275 (“Serial No.

The logo features the word "PEACE" in a large, serif font with a stylized globe behind it, and the word "WELLNESS" in a smaller, sans-serif font below it.
86/337,275”) for the mark WELLNESS, in the name of Peace Wellness Nutraceuticals, LLC, an Arizona limited liability company (“Applicant”), which was published for opposition in the Official Gazette on May 12, 2015. Threshold Enterprises Ltd. (“Threshold Enterprises”), a corporation of Delaware with its principal place of business at 23 Janis Way, Scotts Valley, California 95066, believes it will be damaged by the registration of the mark in Serial No.

Notice of Opposition
Serial No. 86/337,275

86/337,275 and hereby opposes the same, in accordance with Section 13 of the Trademark (Lanham) Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Threshold Enterprises alleges as follows:

1. On information and belief, Applicant is an Arizona limited liability company with its principal place of business at 7600 N. 15th Street, Suite 102, Phoenix, Arizona 85020.

2. Applicant filed Serial No. 86/337,275 on July 15, 2014, seeking registration of

 PEACE WELLNESS for, inter alia, “Dietary and nutritional supplements; nutraceuticals for use as a dietary supplement; Nutritional supplements” in International Class 005.

3. Threshold Enterprises is the owner of incontestable U.S. Trademark Registration No. 1,965,003 for WELLNESS FORMULA for “vitamins, dietary herbal supplements and nutritional supplements.” WELLNESS FORMULA was originally registered by Source Naturals, Inc., a wholly owned subsidiary of Threshold Enterprises, and was later assigned to Threshold Enterprises. This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FORMULA in commerce or in connection with the goods specified in the registration. Registration No. 1,965,003 disclaims the exclusive right to use FORMULA apart from the mark WELLNESS. Since at least thirty-one years prior to Applicant’s filing date for Serial No. 86/337,275, Threshold Enterprises adopted and has continuously used its WELLNESS FORMULA mark in connection with vitamins, dietary supplements and nutritional supplements.

4. WELLNESS FORMULA is a prominent national brand, with products available nationwide in all major markets.

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5. Threshold Enterprises is the owner of U.S. Trademark Registration No. 3,933,241 for WELLNESS FIZZ for “dietary supplements, nutritional supplements, food supplements and herbal supplements.” This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FIZZ in commerce or in connection with the goods specified in the registration. Since at least five years prior to Applicant’s filing date for Serial No. 86/337,275 Threshold Enterprises adopted and has continuously used its WELLNESS FIZZ mark in connection with dietary supplements, nutritional supplements, food supplements and herbal supplements.

6. Threshold Enterprises is the owner of U.S. Trademark Registration No. 3,073,471 for WELLNESS SHOTS for “dietary supplement.” This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS SHOTS in commerce or in connection with the goods specified in the registration. Since at least seven years prior to Applicant’s filing date for Serial No. 86/337,275, Threshold Enterprises adopted and has continuously used its WELLNESS SHOTS mark in connection with dietary supplements. Registration No. 3,073,471 disclaims the word WELLNESS.

7. Threshold Enterprises is the owner of U.S. Trademark Registration No. 4,405,519 for WELLNESS SHOT for “dietary supplements.” This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS SHOT in commerce or in connection with the goods specified in the registration. Since at least seven years prior to Applicant’s filing date for Serial No. 86/337,275, Threshold Enterprises adopted and has continuously used its WELLNESS SHOT mark in connection with dietary supplements. Registration No. 4,405,519 disclaims the word SHOT.

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8. Threshold Enterprises is the owner of U.S. Trademark Registration No. 4,386,422 for WELLNESS ON THE GO for “dietary supplements.” This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS ON THE GO in commerce or in connection with the goods specified in the registration. Since at least one year prior to Applicant’s filing date for Serial No. 86/337,275, Threshold Enterprises adopted and has continuously used its WELLNESS ON THE GO mark in connection with dietary supplements. Registration No. 4,386,422 disclaims the word WELLNESS.

5. Furthermore, Threshold Enterprises has adopted and used numerous other marks containing WELLNESS in connection with health and nutritional products since at least as early as 1997 and in which Threshold Enterprises has developed substantial common law trademark rights. Current products in its Wellness Family of Products include a variety of nutritional supplements and health products in liquids, tablets, capsules, powders, effervescent products, sprays, oils and other forms. The marks in which Threshold Enterprises has developed common law trademark rights include:

WELLNESS BREATHE FREE

WELLNESS C-1000

WELLNESS COLD & FLU

WELLNESS COLLOIDAL SILVER

WELLNESS COLLOIDAL SILVER NASAL SPRAY

WELLNESS COLLOIDAL SILVER THROAT SPRAY

WELLNESS COUGH SYRUP

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WELLNESS COUGH SYRUP FOR KIDS

WELLNESS EARACHE

WELLNESS ELDERBERRY EXTRACT

WELLNESS ELDERBERRY LIQUID EXTRACT

WELLNESS FIZZ

WELLNESS FLUGUARD

WELLNESS FORMULA

WELLNESS GARLICELL

WELLNESS HERBAL KIDS LIQUID

WELLNESS HERBAL RESISTANCE LIQUID

WELLNESS HERBAL THROAT SPRAY

WELLNESS IMMUNOW

WELLNESS IMMUNE CHEWABLE

WELLNESS LARCH EXTRACT

WELLNESS MULTIPLE

WELLNESS OIL OF OREGANO

WELLNESS OLIVE LEAF

WELLNESS TRANSFER FACTOR

WELLNESS ZINC LOZENGES

WELLNESS ZINC THROAT SPRAY

6. Threshold Enterprises has invested substantial amounts of time, effort and money in developing, marketing, promoting and protecting its WELLNESS FORMULA, WELLNESS

FIZZ, WELLNESS SHOTS, WELLNESS SHOT, and WELLNESS ON THE GO trademarks and its common law WELLNESS marks throughout the United States in the field of dietary, herbal, and nutritional supplements. As such, in addition to the protection afforded Threshold Enterprises by its federal trademark registrations for the WELLNESS FORMULA, WELLNESS FIZZ, WELLNESS SHOTS, WELLNESS SHOT, and WELLNESS ON THE GO trademarks, Threshold Enterprises has extensive, non-registered statutory and common law rights in and to the WELLNESS FORMULA, WELLNESS FIZZ, WELLNESS SHOTS, WELLNESS SHOT, and WELLNESS ON THE GO marks.

7. Applicant has no license, consent or permission from Threshold Enterprises to use

or register . The logo features the word "PEACE" in a large, serif font above the word "WELLNESS" in a smaller, sans-serif font. A stylized DNA double helix is positioned behind the text.

8. Applicant's mark  so resembles Threshold Enterprises' WELLNESS FORMULA, WELLNESS FIZZ, WELLNESS SHOTS, WELLNESS SHOT, and WELLNESS ON THE GO marks and Threshold Enterprises' common law WELLNESS marks that it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C. §1052(d); and more particularly, Applicant's mark and use thereof are likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that the goods/services in Serial No. 86/337,275 originate with or are affiliated with Threshold Enterprises, or otherwise are authorized, licensed or sponsored by Threshold Enterprises.

9. By reasons of the foregoing, Threshold Enterprises will be gravely damaged by

Notice of Opposition
Serial No. 86/337,275



the registration of WELLNESS for the goods in Serial No. 86/337,275, because registration of that mark would be in violation of Threshold Enterprises' federal and common law trademark rights.

WHEREFORE, Threshold Enterprises prays that this Notice of Opposition be sustained in favor of Threshold Enterprises and that Serial No. 86/337,275 be denied registration.

You are hereby authorized to deduct the \$300 fee for filing this Opposition, and any additional fees necessary to process this Notice, from Deposit Account No. 502387 in the name of Arnold Porter LLP.

Respectfully submitted,

THRESHOLD ENTERPRISES LTD.

Dated: November 9, 2015

/s/

Erica Connolly
ARNOLD & PORTER LLP
Three Embarcadero Center
10th Floor
San Francisco, California 94111
Phone: (415) 471-3100
Fax: (415) 471-3400
E-Mail: erica.connolly@aporter.com

Attorneys for Opposer

PROOF OF SERVICE

I am over eighteen years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Three Embarcadero Center, 10th Floor, San Francisco, California 94111. I am readily familiar with the practice of this office for collection and processing of correspondence for mail delivery, and they are deposited that same day in the ordinary course of business.

On November 9, 2015, I served the following document(s):

NOTICE OF OPPOSITION

I served the document(s) on the following person(s):

Pollie Gautsch, Esq.
G&A Legal, APC
2033 San Elijo Ave. # 201
Cardiff, CA 92007-1726

Attorney for Applicant

- (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 9, 2015

Signature: _____/s/_____

Type or Print Name: Bryan Gresham