

ESTTA Tracking number: **ESTTA728665**

Filing date: **02/22/2016**

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	Elevated Capital Group LLC
Granted to Date of previous extension	02/21/2016
Address	104 Shongaloo Lane Mandeville, LA 70741 UNITED STATES

Attorney information	Ralph H. Cathcart Ladas & Parry LLP 1040 Avenue of the Americas New York, NY 10018-3738 UNITED STATES rcath- cart@ladas.com,dprahl@ladas.com,jwon@ladas.com,fmontalvo@ladas.com,rrora@ladas.com Phone:(212) 708-1920
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Applicant Information

Application No	86584714	Publication date	08/25/2015
Opposition Filing Date	02/22/2016	Opposition Period Ends	02/21/2016
Applicant	MYGENETX LABORATORY, LLC 201 JORDAN ROAD FRANKLIN, TN 37067 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: clinical, medical and genetic laboratory services; medical, scientific and technical research and development services

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.	4835805	Application Date	03/03/2015
Registration Date	10/20/2015	Foreign Priority Date	NONE
Word Mark	MYGENESRX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2014/11/25 First Use In Commerce: 2014/11/25 Diagnostic preparations for medical purposes

Attachments	86551557#TMSN.png(bytes) Notice of Opposition - MYGENETX.pdf(803022 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	/Ralph H. Cathcart/
Name	Ralph H. Cathcart
Date	02/22/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ELEVATED CAPITAL GROUP LLC	:	
	:	
Opposer,	:	Opposition No. _____
	:	
v.	:	Serial No. 86/584,714
	:	
MYGENETX LABORATORY, LLC	:	
	:	
Applicant.	:	
	:	
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NOTICE OF OPPOSITION

In the matter of Application Serial No. 86/584,714, filed on April 1, 2015, by MYGENETX LABORATORY, LLC, a Tennessee corporation with an address at 201 Jordan Road, Franklin, Tennessee 37067 (“Applicant”), seeking registration on the Principal Register of the trademark MYGENETX in connection with

“clinical, medical and genetic laboratory services; medical, scientific and technical research and development services.”

in International Class 42; (“MYGENETX”), which intent-to-use application was published for opposition on August 25, 2015 with extensions of time to file a Notice of Opposition granted up to and including Sunday, February 21, 2016;

Elevated Capital Group LLC, a Texas limited liability company with an address of 104 Shongaloo Lane, Mandeville, Louisiana 70741, dba MyGenesRX (“Opposer”), believes that it is or will be damaged by the registration of MYGENETX Application Serial No. 86/584,714 and hereby opposes registration of the mark on the following grounds:

Section 2(d) Likelihood of Confusion

1. Opposer is the owner of the common law rights to the distinctive MYGENESRX Marks, including MYGENESRX formative and composite Marks and MYGENESRX Registration No. 4,835,805 for “Diagnostic preparations for medical purposes” in International Class 5 (“MYGENESRX Marks”).

2. Opposer adopted and has continuously used Opposer’s MYGENESRX Marks in commerce in connection with “Diagnostic preparations for medical purposes” in International Class 5 since prior to the constructive priority date or filing date of MYGENETX.

3. Opposer has advertised, promoted, marketed, and otherwise publicized its goods such that consumers have come to know and recognize Opposer’s MYGENESRX Marks as identifying goods which originate with, are authorized by, or otherwise identify, Opposer.

4. Applicant’s use of the virtually identical MYGENETX in connection with “clinical, medical and genetic laboratory services; medical, scientific and technical research and development services.” in International Class 42 constitutes use of a mark confusingly similar to Opposer’s MYGENESRX Marks. Applicant’s MYGENETX mark is likely to be perceived by purchasers as either a variation or another of Opposer’s MYGENESRX Marks. Moreover, Applicant’s applied-for services are closely related and/or complimentary to the goods marketed and sold by Opposer under Opposer’s MYGENESRX Marks.

5. Insofar as the recited goods and services are not identical, consumers are likely to believe that Opposer has “bridged the gap” or expanded to additional related

and/or complimentary goods within Opposer's Natural Zone of Expansion.

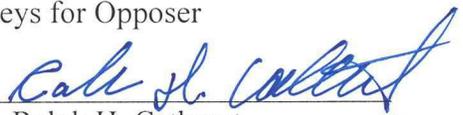
6. Registration should be refused to Applicant pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's MYGENETX mark so closely resembles Opposer's MYGENESRX Marks as to be likely, when used on or in connection with the services identified in the MYGENETX application, to cause confusion, or to cause mistake, or to deceive, insofar as the average purchaser is likely to be confused or deceived into believing that Applicant's services originate with Opposer, or are in some way associated with, or are connected, sponsored or authorized by, Opposer, with consequent injury to Opposer and to the public.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial No. 86/584,714 be refused registration.

Respectfully submitted,

LADAS & PARRY LLP
Attorneys for Opposer

Dated: February 22, 2016

By: 

Ralph H. Cathcart
Jennifer Kwon
Francesca M. Montalvo
1040 Avenue of the Americas
New York, New York 10018
(212) 708-1920
(Our Ref: C15672745)

CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** has been transmitted electronically to the United States Patent and Trademark Office on the date indicated:

Dated: February 22, 2016



Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served via First Class Mail, postage pre-paid, on the date indicated below, to the following:

MYGENETX LABORATORY, LLC
201 Jordan Road
Franklin, Tennessee 37067

Robert P. Felber, Jr.
Waller Lansden Dortch & Davis Llp
511 Union St Ste 2700
Nashville, Tennessee 37219-1791

Dated: February 22, 2016



Reinaldo M. Roa