

ESTTA Tracking number: **ESTTA751085**

Filing date: **06/08/2016**

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	Decommodification, LLC		
Entity	limited liability company	Citizenship	California
Address	660 Alabama Street 4th Floor San Francisco, CA 94110 UNITED STATES		

Attorney information	Nate A. Garhart Cobalt LLP 918 Parker Street, Building A21 Berkeley, CA 94710 UNITED STATES trademarks@cobaltlaw.com Phone:510-841-9800		
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### Applicant Information

Application No	86845215	Publication date	05/10/2016
Opposition Filing Date	06/08/2016	Opposition Period Ends	06/09/2016
Applicant	Axcentria Pharmaceuticals, LLC 306 Keystone Drive Telford, PA 18969 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: On-line retail store services featuring electronic cigarettes, disposable electronic cigarettes, electronic cigarette kits, and accessories sold therewith, namely, cartomizers, clearomizers, batteries, battery chargers, electronic cigarette batteries, power supplies and car adapters for charging electronic cigarettes, cartridges sold filled with liquid containing flavoring ingredients for electronic cigarettes
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2813051	Application Date	02/15/2003
Registration Date	02/10/2004	Foreign Priority Date	NONE

Word Mark	BURNING MAN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1986/06/01 First Use In Commerce: 1987/06/01 ORGANIZING COMMUNITY FESTIVALS FEATURING A VARIETY OF ACTIVITIES, NAMELY, LIVE MUSIC, ART DISPLAYS, AND PARTICIPATORY GAMES; CONDUCTING ENTERTAINMENT EXHIBITIONS IN THE NATURE OF ART FESTIVALS; AND ENTERTAINMENT IN THE NATURE OF ART FESTIVALS

U.S. Registration No.	4231201	Application Date	09/03/2011
Registration Date	10/23/2012	Foreign Priority Date	NONE

Word Mark	BURNING MAN BREW
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2012/07/27 First Use In Commerce: 2012/08/11 Beer; Beer, ale, lager, stout and porter; Brewed malt-based alcoholic beverage in the nature of a beer

Attachments	85414857#TMSN.png( bytes ) BURNING MAN cl 35 NOO.pdf(303699 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	/Nate A. Garhart/
Name	Nate A. Garhart
Date	06/08/2016

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

In the matter of Trademark Application

Serial No.: 86/845,215  
Filed: December 10, 2015  
By: Axcentria Pharmaceuticals, LLC  
Published: May 10, 2016  
For the Trademark: BURNING MAN  
International Class: 035

Decommodification, LLC,

Opposer,

v.

Axcentria Pharmaceuticals, LLC,

Applicant.

Opposition No.

**NOTICE OF OPPOSITION**

Opposer, Decommodification, LLC (“Decommodification” or “Opposer”), a California limited liability company, having its principal place of business at 660 Alabama Street, 4<sup>th</sup> Floor, San Francisco, California, 94110, United States, will be damaged by the issuance of a registration for the mark BURNING MAN (“Applicant’s Mark” or “Mark”) as applied for in Application Serial No. 86/845,215, filed on December 10, 2015, by Applicant Axcentria Pharmaceuticals, LLC, a Delaware limited liability company, located at 306 Keystone Drive, Telford, Pennsylvania 18969, United States (“Applicant”). Decommodification hereby opposes registration of Applicant’s Mark.

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As grounds for opposition, Decommodification alleges:

1. Decommodification is the owner of the following United States trademark registrations for the following marks (the “Decommodification BURNING MAN Marks”):

- Reg. No. 2,813,051, for the mark BURNING MAN for use in connection with “Organizing community festivals a variety of activities, namely, live music, art displays, and participatory games; conducting entertainment exhibitions in the nature of art festivals; and entertainment in the nature of art festivals,” in Class 41;
- Reg. No. 4,231,201, for the mark BURNING MAN BREW for use in connection with “Beer; Beer, ale, lager, stout and porter; Brewed malt-based alcoholic beverage in the nature of a beer,” in Class 32.

2. Decommodification’s registration for its BURNING MAN mark in Class 41 is incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and thus serves as conclusive evidence of the validity of Opposer’s BURNING MAN mark pursuant to 15 U.S.C. § 1115(b).

3. Decommodification also owns and claims common law trademark rights in its BURNING MAN mark as used for a wide variety of goods and services, including, but not limited to, promotional materials relating to the annual BURNING MAN event (“Burning Man Event”) and related promotional materials. The Burning Man Event is a weeklong event that originated in San Francisco in 1986, moved to Nevada’s Black Rock Desert in 1990, and has become the world’s premier community arts and culture event, attracting over 65,000 attendees per year. Decommodification has a mobile-enabled site that event attendees regularly use, and encourages third parties to create apps (including apps similar to those of Applicant) and licenses use of the BURNING MAN mark for such apps in appropriate circumstances.

4. Since at least as early as 1986, the Decommodification BURNING MAN Marks have been consistently and continually used by Decommodification and its predecessors-in-

interest in connection with marketing and promoting the Burning Man Event and related goods and services. By virtue of this consistent use and the ever-increasing popularity of the underlying event, the public has come to know and recognize the Decommodification BURNING MAN Marks as source identifiers for the annual Burning Man Event.

5. Through extensive sales of tickets, attendance by millions of visitors, advertising, and promotion, the Decommodification BURNING MAN Marks are famous, and achieved fame prior to the filing date of Applicant's application opposed herein.

6. Upon information and belief, Decommodification alleges that on December 10, 2015, Applicant filed an application to register the mark BURNING MAN under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), stating its intention to use the mark in connection with "On-line retail store services featuring electronic cigarettes, disposable electronic cigarettes, electronic cigarette kits, and accessories sold therewith, namely, cartomizers, clearomizers, batteries, battery chargers, electronic cigarette batteries, power supplies and car adapters for charging electronic cigarettes, cartridges sold filled with liquid containing flavoring ingredients for electronic cigarettes," in International Class 035.

7. If Applicant were permitted to register its Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Decommodification would likely occur. Persons familiar with the Decommodification BURNING MAN Marks would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Opposer. Such confusion would inevitably result in damage to Decommodification and its licensees.

8. The customers of Decommodification and its licensees, as well as the relevant public, are likely to erroneously perceive goods sold under Applicant's Mark are related to

Opposer's goods and services. Consumers are likely to believe in error that goods offered under Applicant's Mark are offered by, in association with, or under license from Decommodification.

9. Any defect, objection to, or fault found with Applicant's goods marketed under Applicant's Mark would necessarily reflect negatively on and seriously injure the reputation that Decommodification has established for the famous Burning Man Event.

10. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use its Mark, all to the detriment of Opposer.

### COUNT I

#### **LIKELIHOOD OF CONFUSION**

11. Opposer repeats and realleges paragraphs 1-10 as paragraph 11 of this Count I.

12. Opposer's use and registration of its BURNING MAN Marks long predates the filing date of the opposed Application.

13. On information and belief, Applicant was aware of the Opposer's BURNING MAN Marks at the time it filed its application and Applicant intentionally chose the mark BURNING MAN to allude to the famous BURNING MAN event.

14. Applicant's Mark creates the same commercial connotation as the Decommodification BURNING MAN Marks.

15. On information and belief, Applicant's uses its Mark, or intends to use its Mark, on or in connection with products designed to create the impression of association with Opposer's BURNING MAN event.

16. Applicant's targeted customer and consumer base does or will overlap with the customers and consumers of Opposer's BURNING MAN event.

17. Applicant's goods descriptions contain no restrictions or limitations as to Applicant's channels of trade. Opposer may therefore assume that Applicant's Mark, like Opposer's own BURNING MAN Marks, will be used in all accepted channels of trade. Applicant's channels of trade for its products overlap with the channels of trade used by, or exist within the natural zone of expansion available to, Opposer for marketing, selling, and otherwise distributing its products and services bearing the Decommodification BURNING MAN Marks.

18. Applicant's use and registration of Applicant's Mark will inevitably lead to confusion, to mistake, or to deception of the public within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Opposer's grave and irreparable damage.

19. Registration of Applicant's Mark should be denied based on a likelihood of confusion with Opposer's prior BURNING MAN Marks, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

## **COUNT II**

### **DILUTION**

20. Opposer repeats and realleges paragraphs 1-19 as paragraph 20 of this Count II.

21. As further ground for the opposition, Opposer's BURNING MAN mark, which has been in continuous use in commerce for more than 30 years, and registered for over 10 years, is famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

22. Opposer's BURNING MAN mark became famous prior to the filing date of the application for Applicant's Mark and prior to any date of first use or first use in commerce of Applicant's Mark.

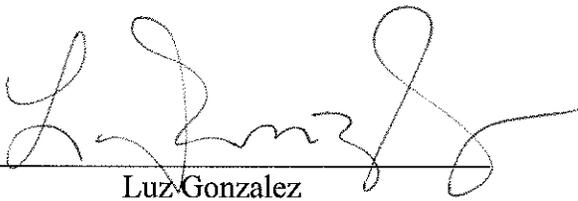
23. Registration of Applicant's Mark is likely to cause dilution of Opposer's BURNING MAN mark, to the injury of Opposer, by lessening the capacity of Opposer's



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8<sup>th</sup> day of June 2016, a true and correct copy of the foregoing NOTICE OF OPPOSITION was deposited in a U.S. Mailbox to be served upon Applicant by U.S. First Class Mail in an envelope, postage pre-paid, addressed as follows:

Axcentria Pharmaceuticals, LLC  
306 Keystone Drive  
Telford, PA18969



Luz Gonzalez