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Filing date: **03/21/2014**

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	BIOGAIA AB
Granted to Date of previous extension	03/22/2014
Address	Kungsbroplan 3AP.O. Box 3242 Stockholm, 103 64 SWEDEN

Attorney information	David A. Harlow Manning, Fulton & Skinner, P.A. 3605 Glenwood Avenue, Suite 500 P.O. Box 20389 Raleigh, NC 27619-0389 UNITED STATES harlow@manningfulton.com

Applicant Information

Application No	86028951	Publication date	01/21/2014
Opposition Filing Date	03/21/2014	Opposition Period Ends	03/22/2014
Applicant	Gaia Herbs, Inc. 101 Gaia Herbs Drive Brevard, NC 28712 GERMANY		

Goods/Services Affected by Opposition

Class 003. First Use: 2011/06/24 First Use In Commerce: 2011/06/24 All goods and services in the class are opposed, namely: Herb-based breath freshener; Herb-basedcosmetic preparations, namely, oil or wax body care products, namely, lotions, salves, and balms
Class 005. First Use: 2013/04/01 First Use In Commerce: 2013/04/01 All goods and services in the class are opposed, namely: Organic or herb-based energy and antioxidant aids in the form of dietary supplements; Organic or herb-based cough syrup; Organic or herb-based digestive aids in the form of dietary supplements; Organic or herb-based ear drops; Organic or herb-based diuretics; Botanical derived iron in the form of a liquid dietary supplement
Class 030. First Use: 2011/05/20 First Use In Commerce: 2011/05/20 All goods and services in the class are opposed, namely: Herbal tea
Class 032. First Use: 2013/04/01 First Use In Commerce: 2013/04/01 All goods and services in the class are opposed, namely: Organic or herb-based energy aids in the form of non-alcoholic energy shots

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.	3398673	Application Date	08/11/2006
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	BIOGAIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical preparations for use in treating gastric disease and disturbances, baby food; media bacteriological cultures, bacteria and preparations of bacteria in the nature of probiotics for medical use and healthcare; medical dental care preparations, namely, chewing gum, lozenges, pastilles and mouthwash for medical purposes; all of the foregoing excluding liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts Class 029. First use: First Use: 0 First Use In Commerce: 0 Milk, milk based drinks, namely, drinking yoghurt, milk products, namely, eating yoghurt and dairy products containing lactic acid bacteria, excluding ice cream, ice milk, and frozen yoghurt		

Attachments	79030227#TMSN.jpeg(bytes) Notice of Opposition L444500720972014032113501 8 (2).pdf(144116 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/David A. Harlow/
Name	David A. Harlow
Date	03/21/2014

Attorney Docket No. 26133/L44450

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of	)	
	)	
Application Serial No. 86/028,951	)	
	)	**Opposition No.: _____**
Mark: GAIA	)	
	)	
Published: January 21, 2014	)	
	)	
BioGaia AB	)	
Opposer,	)	
	)	
v.	)	
	)	
Gaia Herbs, Inc.	)	
Applicant.	)	

NOTICE OF OPPOSITION

BioGaia AB, a public limited liability company organized and existing under the laws of the Kingdom of Sweden, quoted on the Nasdaq OMX Nordic stock exchange in Sweden and having a principal place of business at Kungsbroplan 3A, 103 64 Stockholm, Sweden, believes it will be damaged by registration of the mark shown in Application Serial No. 86/028,951 and hereby opposes the same.

The opposition is based on 15 U.S.C. §1063(a) and the grounds for this Opposition are as follows:

1. An Extension of time to Oppose was requested and duly granted pursuant to 37 CFR §2.102.

2. Gaia Herbs, Inc. (hereinafter "Applicant"), seeks to register the GAIA mark (hereinafter "Applicant's Mark"), for Applicant's Goods as set forth and published in the *Official Gazette* on page TM 404 of the January 21, 2014 issue:

> CLASS 3—COSMETICS AND CLEANING PREPARATIONS
>
> FOR HERB-BASED BREATH FRESHENER; HERBBASED COSMETIC PREPARATIONS, NAMELY, OIL OR WAX BODY CARE PRODUCTS, NAMELY, LOTIONS, SALVES, AND BALMS (U.S. CLS. 1, 4, 6, 50, 51 AND 52).
> FIRST USE 6-24-2011; IN COMMERCE 6-24-2011.
>
> CLASS 5—PHARMACEUTICALS
>
> FOR ORGANIC OR HERB-BASED ENERGY AND ANTIOXIDANT AIDS IN THE FORM OF DIETARY SUPPLEMENTS; ORGANIC OR HERB-BASED COUGH SYRUP; ORGANIC OR HERB-BASED DIGESTIVE AIDS IN THE FORM OF DIETARY SUPPLEMENTS; ORGANIC OR HERB-BASED EAR DROPS; ORGANIC OR HERBBASED DIURETICS; BOTANICAL DERIVED IRON IN THE FORM OF A LIQUID DIETARY SUPPLEMENT (U.S. CLS. 6, 18, 44, 46, 51 AND 52).
> FIRST USE 4-1-2013; IN COMMERCE 4-1-2013.
>
> CLASS 30—STAPLE FOODS
>
> FOR HERBAL TEA (U.S. CL. 46).
> FIRST USE 5-20-2011; IN COMMERCE 5-20-2011.
>
> CLASS 32—LIGHT BEVERAGES
>
> FOR ORGANIC OR HERB-BASED ENERGY AIDS IN THE FORM OF NON-ALCOHOLIC ENERGY SHOTS (U.S. CLS. 45, 46 AND 48).
> FIRST USE 4-1-2013; IN COMMERCE 4-1-2013.
> SHAILA LEWIS, EXAMINING ATTORNEY

3. Opposer, BioGaia AB is the owner of United States Trademark Registration No. 3,398,673 for BIOGAIA (hereinafter "Opposer's Mark"), registered August 18, 2008, for the following goods:

> **IC 005. US 006 018 044 046 051 052. G & S:** Pharmaceutical preparations for use in treating gastric disease and disturbances, baby food; media bacteriological cultures, bacteria and preparations of bacteria in the nature of probiotics for medical use and healthcare; medical dental care preparations, namely, chewing gum, lozenges, pastilles and mouthwash for medical purposes; all of the foregoing excluding liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts
>
> **IC 029. US 046. G & S:** Milk, milk based drinks, namely, drinking yoghurt, milk products, namely, eating yoghurt and dairy products containing lactic acid bacteria, excluding ice cream, ice milk, and frozen yoghurt

Said registration is valid, subsisting, unrevoked and uncancelled.

4. Applicant has recently filed a Petition to Cancel the registration for Opposer's Mark, claiming that Applicant's Mark is confusingly similar to Opposer's Mark

and creates the same commercial impression, and that when Opposer's Mark is used in connection with Opposer's Goods, confusion is likely to result with respect to Applicant's Goods.

5. Opposer is a multi-national company headquartered in Stockholm, Sweden, which sells its products in more than sixty countries throughout the world.

6. Opposer's date of first use of its BIOGAIA house mark in the United States is believed to be in 1990. This includes use in commerce of the BIOGAIA mark in connection with the sale of its probiotic products in Class 005 for use to aid digestion. Use in commerce in the United States for consumer products in Class 005 including tablets and drops to aid digestion under Opposer's mark BIOGAIA, began at least as early as 1999 and has been in continuous use since.

7. As a result of Opposer's extensive marketing efforts around the world, including the United States, Opposer has built up valuable goodwill in Opposer's Mark as used on Opposer's Goods.

8. While Applicant has used its registered mark GAIA HERBS for many years for herbs and herb based products, Applicant now seeks registration of a GAIA mark, closer in look and sound to Opposer's mark, and for an expansion into goods which overlap Opposer's goods and for which Opposer has priority.

9. Given the assertion of the Applicant in its co-pending Cancellation proceeding referenced above, if Applicant is allowed registration of its relatively new GAIA mark in goods which overlap Opposer's goods sold under its BIOGAIA mark, confusion may result with respect to Opposer's goods, resulting in injury and damage to Opposer.

10. If Applicant is granted the registration herein opposed, it would be placed in a position to harass and cause annoyance to the public as the registration would give Applicant *prima facie* exclusive right to Applicant's Mark and all confusingly similar marks, thereby potentially causing damage and injury to Opposer.

11. As a result of the substantial similarity alleged by Applicant in its co-pending Cancellation proceeding referenced above, as to the meaning, appearance and sound between Applicant's Mark and Opposer's Mark, the substantially similar nature of the goods of Applicant and the goods of Opposer, and the fact that such goods may be sold in common channels of commerce and directed to the same classes of customers, registration of Applicant's Mark may cause damage and injury to Opposers.

12. Because Applicant's Mark consists of or comprises a mark which Applicant has alleged so resembles a mark registered in the Patent and Trademark Office, and which is a senior mark in interstate usage by Opposer, and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause a mistake, confusion, or to deceive, registration of Applicant's Mark is barred under 15 U.S.C. §1052(d).

PRAYER FOR RELIEF

Opposer prays that said Application Serial No. 86/028,951 be rejected, and the registration of the mark therein shown for the goods therein specified be refused and denied.

Respectfully submitted this 21st day of March, 2014.

/David A. Harlow/
David A. Harlow
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USPTO Reg.No.37,146
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