

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

TTAB

03 JAN 27 PM 9:31  
UNITED STATES PATENT AND TRADEMARK OFFICE

ProActive Labs, Inc.,

Opposer,

v.

Opposition No.  
Serial No. 76401382

Oxyfresh Worldwide, Inc.

Applicant



01-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

NOTICE OF OPPOSITION

PROACTIVE LABS, INC. ("Opposer"), by its attorneys, as and for its Notice of  
Opposition against Oxyfresh Worldwide, Inc. ("Applicant"), hereby alleges as follows:

1.

Opposer is a Georgia corporation with a place of business at 6289 Bankhead Highway,  
Building 6, Austell, Georgia 30168-4700

2.

Upon information and belief, Applicant is a corporation organized and existing under the  
laws of the State of Washington, having its principal place of business at 1301 West Lakewood  
Drive, Coeur d' Alene, Idaho 83814.

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"Express Mail" Mailing Label Number

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I hereby certify that this paper or fee is being deposited with the United States  
Postal Service "Express Mail Post Office to Addressee" service under 37  
C.F.R. 1.110 on the date indicated above and is addresses to the Assistant  
Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 on

1/17/03  
(Date of Deposit)

A. Todd Herolla  
(Typed or Printed Name of person mailing paper or fee)

(Signature)

3.

Since January 1, 2002, Opposer has used two stylized versions of an "O" trademark in connection with dietary supplements.

4.

Opposer is the owner of the following trademarks with applications pending before the United States Patent and Trademark Office for registration on the Principal Register:

<u>Mark</u>	<u>Serial Number</u>	<u>Products</u>
"O" and Design	76/369030	Dietary Supplements
"O (with people)" and Design	76/369028	Dietary Supplements

5.

On information and belief, on April 29, 2002, Applicant filed an intent to use application on the Principal Register for the mark "O" So Slender, Serial No. 76/401382, in International Class 5 for "thermogenic additive for use in drinking water for use as an appetite suppressant and metabolism booster; soy protein based nutritional drink mix containing herbal and nutritional ingredients for use as a meal replacement; herbal and nutritional supplements for use in weight loss."

6.

Commencing prior to the filing date of Applicant's mark and continuing to date, Opposer has sold its "O" and Design and "O (with people)" and Design goods in interstate commerce.

7.

Upon information and belief, the goods for which Applicant seeks to register the "O" So Slender mark are identical to or closely related to the goods or in connection with which Opposer has used its "O" and Design and "O (with people)" and Design marks.

8.

Applicant's "O" So Slender mark is confusingly similar to Opposer's "O" and Design and "O (with people)" and Design marks.

9.

Opposer would be injured by the granting to Applicant of the registration sought because Applicant's "O" So Slender mark so resembles Opposer's "O" and Design and "O (with people)" and Design marks as to be likely, when used on or in connection with Applicant's goods:

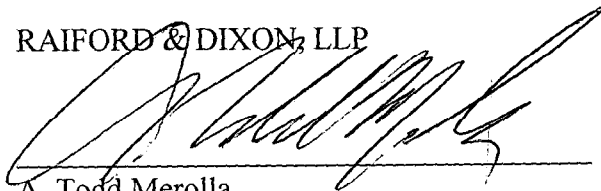
- (a) to cause confusion, or to cause mistake, or to deceive;
- (b) to falsely suggest a connection with Opposer;
- (c) to damage Opposer's valuable goodwill in its "O" and Design and "O (with people)" and Design marks;
- (d) to interfere with Opposer's sale of its own goods under its "O" and Design and "O (with people)" and Design marks;
- (e) to dilute the distinctiveness of Opposer's "O" and Design and "O (with people)" and Design marks;

WHEREFORE, Opposer, by its attorneys, respectfully requests that its opposition be sustained and that the applicant for registration herein opposed be denied.

A duplicate copy of this Notice of Opposition and the fee required in Section 2.6(a)(17) are enclosed herewith. An original and two copies of this Notice of Opposition are enclosed.

Respectfully submitted this 17<sup>th</sup> day of January, 2003.

RAIFORD & DIXON, LLP

A handwritten signature in black ink, appearing to read 'A. Todd Merolla', written over a horizontal line.

A. Todd Merolla  
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THOMAS C. RAIFORD, JR. (1940-1986)

January 17, 2003

**Via USPS Express Mail**

Box TTAB – No Fee  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

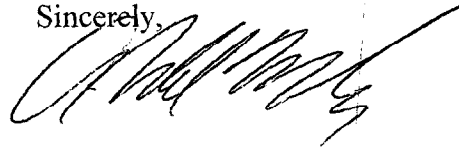
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**RE: FILING NOTICE OF OPPOSITION FOR "O" SO SLENDER  
Serial No. 76401382**

To Whom It May Concern:

Enclosed please find an original in duplicate and one copy of Opposer's Notice of Opposition along with the filing fee of \$300.00. Please send back the copy stamped "filed" within the enclosed envelope. If there are any questions, please call.

Sincerely,



A. Todd Merolla

/no  
Enclosures

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