

ESTTA Tracking number: **ESTTA114424**

Filing date: **12/13/2006**

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	Neuville Industries, Inc.
Granted to Date of previous extension	12/13/2006
Address	9451 Neuville Avenue Hildebran, NC 28637 UNITED STATES
Attorney information	Arthur J. DeBaugh Moore & Van Allen, PLLC 430 Davis Drive, Suite 500 Morrisville, NC 27560 UNITED STATES artdebaugh@mvalaw.com Phone:919-286-8000

**Applicant Information**

Application No	79013262	Publication date	08/15/2006
Opposition Filing Date	12/13/2006	Opposition Period Ends	12/13/2006
International Registration No.	0856488	International Registration Date	06/28/2005
Applicant	Foot Steps Orthotics Pty Ltd ACN 093 730 324 27 Monro Avenue KIRRAWEE NSW 2232 AUSTRALIA		

**Goods/Services Affected by Opposition**

Class 010. All goods and services in the class are opposed, namely: Orthopedic articles, namely, orthotic footwear products in the nature of functional foot orthoses, foot orthotics, shoe inserts, insoles, arch supports; orthotic footwear, orthopedic footwear, orthotic and orthopedic devices for treating feet and legs in the nature of foot orthoses, foot orthotics, orthotics, shoe inserts, insoles, and arch supports
Class 025. All goods and services in the class are opposed, namely: Footwear

**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	2312529	Application Date	05/21/1998
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No.			
Registration Date	01/25/2000	Foreign Priority Date	NONE
Word Mark	PEDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1932/03/00 First Use In Commerce: 1932/03/00 LADIES' AND GIRLS' PANTYHOSE, TIGHTS, KNEE-HIGHS, SOCKS, FOOT COVERS, SHOE LINERS AND SLIPPERS; MEN'S AND BOYS' SOCKS, FOOT COVERS, SHOE LINERS AND SLIPPERS; MEN'S, WOMEN'S, BOYS' AND GIRL'S DRESS, CASUAL AND ATHLETIC SHOES, BOOTS, HIGH AND LOW OVERSHOES, SANDALS AND SLIPPERS, SHOE INNER SOLES AND INSERTS		

U.S. Registration No.	2179123	Application Date	07/02/1996
Registration Date	08/04/1998	Foreign Priority Date	NONE
Word Mark	PEDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1964/01/00 First Use In Commerce: 1964/01/00 ladies' and girls' pantyhose, tights, knee-highs, socks, foot covers, shoe liners and slippers; men's and boys' socks, foot covers, shoe liners and slippers		

U.S. Registration No.	934511	Application Date	01/22/1971
Registration Date	05/23/1972	Foreign Priority Date	NONE
Word Mark	PEDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U039 (International Class 025). First use: First Use: 1968/09/00 First Use In Commerce: 1968/09/00 PANTY HOSE AND STOCKINGS		

U.S. Registration No.	2478547	Application Date	10/14/1999
Registration Date	08/14/2001	Foreign Priority Date	NONE
Word Mark	PEDI-CURES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/12/00 First Use In Commerce: 2000/12/00 Socks		

U.S. Registration No.	3113051	Application Date	01/19/2005
Registration Date	07/04/2006	Foreign Priority Date	NONE
Word Mark	PEDS ON THE MOVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/07/11 First Use In Commerce: 2005/07/11 Men's, women's, and children's socks, slippers, sandals, shoes, and insoles; inserts, liners, and covers for shoes; foot pads		

U.S. Registration No.	3152288	Application Date	05/14/2004
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	MEDIPEDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2003/03/00 First Use In Commerce: 2003/03/00 Diabetic socks Class 025. First use: First Use: 2004/09/00 First Use In Commerce: 2004/09/00 Men's, women's and children's socks, hosiery; and women's and girls' pantyhose, tights, knee-highs, thigh-highs, stockings and garters		

U.S. Registration No.	3152289	Application Date	05/14/2004
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	MEDIPEDS		
Design Mark			
Description of Mark	The mark consists of The words MEDIPEDS with a Cadueus wrapped around the letter I.		
Goods/Services	Class 010. First use: First Use: 2003/03/00 First Use In Commerce: 2003/03/00 Diabetic socks Class 025. First use: First Use: 2004/09/00 First Use In Commerce: 2004/09/00 Men's, women's and children's socks, hosiery; and women's and girls' pantyhose, tights, knee-highs, thigh-highs, stockings and garters		

Attachments	75489464#TMSN.gif ( 1 page )( bytes ) 75823057#TMSN.gif ( 1 page )( bytes ) 78549765#TMSN.jpeg ( 1 page )( bytes ) 78976218#TMSN.jpeg ( 1 page )( bytes ) 78976219#TMSN.jpeg ( 1 page )( bytes ) PEDISTEP Opposition.pdf ( 5 pages )(195337 bytes )
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Signature	/Arthur J. DeBaugh/
Name	Arthur J. DeBaugh

Date	12/13/2006
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial Number 79/013,262

Published: August 15, 2006

NEUVILLE INDUSTRIES, INC.,	)	
Opposer,	)	
	)	
v.	)	Opposition Number _____
	)	
FOOT STEPS ORTHOTICS PTY LTD ACN	)	
093 730 324,	)	
Applicant.	)	
	)	

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**NOTICE OF OPPOSITION**

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NEUVILLE INDUSTRIES, INC., a corporation organized and existing under the laws of the State of North Carolina and having a principal place of business at 9451 Neuville Avenue, Hildebran, North Carolina 28637 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in application Serial Number 79/013,262 in International Class 010 and International Class 025 and hereby opposes the same.

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

1. Foot Steps Orthotics Pty Ltd ACN 093 730 324 (hereinafter "Applicant"), who is on information and belief a company organized and existing under the laws of the country of Australia with a place of business at 27 Monro Avenue, Kirrawee, New South Wales 2232, Australia, seeks to register the mark ***Pedistep*** (hereinafter "Applicant's Mark") as a trademark for "orthopedic articles, namely, orthotic footwear products in the nature of functional foot orthoses, foot orthotics, shoe inserts, insoles, arch supports;

orthotic footwear, orthopedic footwear, orthotic and orthopedic devices for treating feet and legs in the nature of foot orthoses, foot orthotics, orthotics, shoe inserts, insoles, and arch supports” in International Class 010 and for “footwear” in International Class 025 (hereinafter collectively “Applicant’s Goods”), as evidenced by publication of said mark in the *Official Gazette* on August 15, 2006.

2. Applicant filed Applicant’s Mark in the United States on June 28, 2006, under the provisions of Section 66(a) of the Lanham Act, 15 U.S.C. § 1141f(a).

3. Prior to the filing date for Applicant’s U.S. application opposed herein and/or the corresponding International Registration date for Applicant’s Mark, and prior to any filing or registration date for Applicant’s base registration, Opposer and/or Opposer’s predecessors in interest used the trademark **PEDS**, alone and/or together with other words or designs (collectively “Opposer’s Mark”) in International Class 010 in connection with diabetic socks and in International Class 025 in connection with a variety of articles of clothing and footwear.

4. Opposer is the owner of the following U.S. trademark registrations for Opposer’s Mark:

<b><u>Mark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Reg. Date</u></b>	<b><u>First Use Date</u></b>	<b><u>Goods</u></b>
<b><i>PEDS</i></b>	2,312,529	01/25/2000	March 1932	Ladies’ and girls’ pantyhose, tights, knee-highs, socks, foot covers, shoe liners and slippers; men’s and boys’ socks, foot covers, shoe liners and slippers; men’s, women’s, boys’ and girls’ dress, casual and athletic shoes, boots, high and low overshoes, sandals and slippers, shoe inner soles and inserts.
<b><i>PEDS</i></b>	2,179,123	08/04/1998	Jan. 1964	Ladies’ and girls’ pantyhose, tights, knee-highs, socks, foot covers, shoe liners and slippers; men’s and boys’ socks, foot covers, shoe liners and slippers.
<b><i>PEDS</i></b>	934,511	05/23/1972	Sept. 1968	Panty hose and stockings.
<b><i>PEDI-CURES</i></b>	2,478,547	08/14/2001	Dec. 2000	Socks.

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>First Use Date</u>	<u>Goods</u>
<b><i>PEDS ON THE MOVE</i></b>	3,113,051	07/04/2006	07/11/2005	Men's, women's, and children's socks, slippers, sandals, shoes, and insoles; inserts, liners, and covers for shoes; foot pads.
<b><i>MEDIPEDS</i></b>	3,152,288	10/03/2006	March 2003 (IC 010) Sept. 2004 (IC 025)	Diabetic socks (IC 010); Men's, women's and children's socks, hosiery; and women's and girls' pantyhose, tights, knee-highs, thigh-highs, stockings and garters (IC 025).
<b><i>MEDIPEDS &amp; Design</i></b>	3,152,289	10/03/2006	March 2003 (IC 010) Sept. 2004 (IC 025)	Diabetic socks (IC 010); Men's, women's and children's socks, hosiery; and women's and girls' pantyhose, tights, knee-highs, thigh-highs, stockings and garters (IC 025).

The foregoing registrations are valid and subsisting, unrevoked and uncanceled. Registration Nos. 2,179,123 and 934,511 have become incontestable pursuant to 15 U.S.C. § 1065.

5. Opposer's use of Opposer's Mark precedes the filing date for Applicant's U.S. application to register Applicant's Mark opposed herein and/or precedes any alleged first use date or registration date or filing date for Applicant's Mark for any International Registration or base registration upon which Applicant can rely.

6. Opposer's use and/or registration dates of each of Opposer's trademark registrations for Opposer's Mark, as listed in paragraph 4 above, precede the filing date for Applicant's U.S. application to register Applicant's Mark opposed herein and/or precede any alleged first use date or registration date or filing date for Applicant's Mark for any International Registration or base registration upon which Applicant can rely.

7. Opposer and Opposer's predecessors in interest have spent substantial amounts of time, money and effort in developing and marketing Opposer's goods under Opposer's Mark in the United States.

8. Opposer's use of Opposer's Mark has been continuous, and has not been abandoned.

9. Applicant's Mark is confusingly similar to Opposer's Mark.

10. Applicant's Mark and Opposer's Mark are used or intended to be used with identical, similar, or related goods.

11. On information and belief, it is expected that Applicant's Goods, in connection with which Applicant will use Applicant's Mark, are or will be marketed to the same potential purchasers in the same relevant markets as are Opposer's goods in connection with which Opposer uses Opposer's Mark.

12. On information and belief, Applicant uses or will use the same or similar media to advertise Applicant's Goods under Applicant's Mark as used by Opposer to advertise Opposer's goods under Opposer's Mark.

13. Upon information and belief, the goods marketed under Applicant's Mark are or will be distributed through the same channels of distribution and are or will be purchased and used by many of the same individuals and entities as those who purchase and use goods marketed under Opposer's Mark.

14. Because of the similarity of marks, goods, relevant markets, advertising, channels of distribution, purchasers, and/or users, Opposer believes that there is a very strong likelihood of confusion if Applicant is permitted to register Applicant's Mark for use in conjunction with Applicant's Goods.

15. Opposer's marketing efforts have caused Opposer and Opposer's Mark to be well-known and well-regarded in the community of consumers who are likely to consider purchasing Applicant's Goods. Therefore, it is likely that some members of the relevant consumer market would be confused by the marketing of Applicant's Goods under Applicant's Mark and would believe that Applicant's Goods were associated with, endorsed by, related to, or actually the goods of Opposer.

16. Any fault or defect in Applicant's Goods would reflect upon and seriously injure Opposer's reputation. Furthermore, individuals or entities that are familiar with Opposer's Mark would confuse the same with Applicant's Mark and might purchase Applicant's Goods in the mistaken belief that they are purchasing the goods of Opposer.

17. If Applicant is granted the registration herein opposed, Applicant would be placed in a position to deceive or mislead the public, as the registration would give Applicant *prima facie* exclusive rights to Applicant's Mark and all confusingly similar marks, thereby causing damage and injury to Opposer.



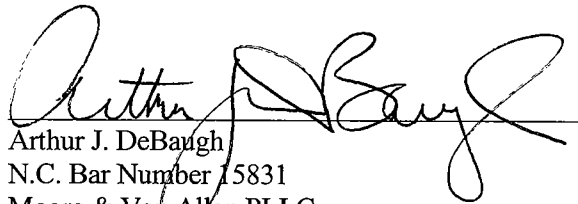
18. Because of the similarity of marks, relevant markets, advertising, channels of commerce, purchasers, and/or consumers, registration of Applicant's Mark would cause damage and injury to Opposer.

19. Because Applicant's Mark consists of a mark which subsumes and/or closely resembles a non-abandoned mark prior used in the United States by Opposer, and Applicant's Mark is likely, when used in connection with Applicant's Goods, to cause confusion, to cause mistake, or to deceive, registration of Applicant's Mark is therefore barred under 15 U.S.C. §1052(d).

20. Accordingly, Opposer prays that said Application Serial Number 79/013,262 be rejected and the registration of the mark therein shown for the goods therein specified be refused and denied.

The \$600 filing fee for this Notice of Opposition is being paid by electronic funds transfer at the time of online filing. The Patent and Trademark Office is hereby authorized to charge any additional fees that may be required to our USPTO Deposit Account Number 502316 in the name of Moore & Van Allen PLLC.

Respectfully submitted this 13<sup>th</sup> day of December, 2006.



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