

ESTTA Tracking number: **ESTTA116513**

Filing date: **12/22/2006**

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 parties oppose registration of the indicated application.

Opposers Information

Name	lovate Health Sciences USA, Inc.
Granted to Date of previous extension	12/27/2006
Address	5100 Spectrum Way Mississauga, Ontario, L4W 5S2 CANADA

Name	lovate Health Sciences International Inc.		
Entity	Corporation	Citizenship	Canada
Address	5100 Spectrum Way Mississauga, Ontario, L4W 5S2 CANADA		

Attorney information	Howard J. Shire, Esq. Kenyon & Kenyon LLP One Broadway New York, NY 10004 UNITED STATES tmdocketny@kenyon.com Phone:212-425-7200
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Applicant Information

Application No	76652161	Publication date	08/29/2006
Opposition Filing Date	12/22/2006	Opposition Period Ends	12/27/2006
Applicant	NxCare, Inc. 218 Silvercreek Pkwy. N Suite 1163 Guelph, Ontario N1H 8E8, CANADA		

Goods/Services Affected by Opposition

Class 005. First Use: 2003/09/25 First Use In Commerce: 2003/09/25 All goods and services in the class are opposed, namely: dietary supplements
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Attachments	the future of bodybuilding -- notice of opposition.pdf (4 pages)(22853 bytes)
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Signature	/Howard J. Shire/
Name	Howard J. Shire, Esq.
Date	12/22/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Iovate Health Sciences International Inc.

and

Iovate Health Sciences U.S.A. Inc.

Opposers,

v.

NXCARE, INC.,

Applicant.

Opposition No. _____

Application Serial No. 76/652,161

Mark: THE FUTURE OF
BODYBUILDING

Filed on December 12, 2005

Published in the Official Gazette
August 29, 2006

Box TTAB
FEE

Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

NOTICE OF OPPOSITION

Opposers, Iovate Health Sciences International Inc. (a Canadian corporation) and Iovate Health Sciences U.S.A. Inc. (a Canadian corporation), both located at 5100 Spectrum Way, Mississauga, Ontario, Canada L4W 5S2, believing that they will be damaged by registration of the alleged mark THE FUTURE OF BODYBUILDING, shown in Application Serial No. 76/652,161 for goods in International Class 5, hereby oppose the same.

As grounds for opposition, Opposers allege as follows:

1. Applicant, NXCare, Inc. (hereinafter "Applicant"), seeks registration of the alleged mark THE FUTURE OF BODYBUILDING in International Class 5 for use in connection with "dietary supplements" (the "Subject Goods").
2. On information and belief, the phrase "the future of bodybuilding" is used and understood by Applicant and others to refer generally to the new advances being made in the field of bodybuilding through the use of the Subject Goods.
3. The Subject Goods are intended to be used by persons who are interested in body building.
4. The phrase "the future of bodybuilding", as used by Applicant and others in connection with bodybuilding, is consistently perceived to describe how a particular product will change or advance bodybuilding, and as such, is a common, descriptive, generic phrase. In addition, the phrase is also laudatory in nature as it suggests that the product is cutting edge or in the forefront of the nutritional supplement industry.
5. On information and belief, the phrase "the future of bodybuilding" has a commonly understood, ordinary meaning when used in connection with the Subject Goods and, thus, cannot be indicative of any particular source of such goods.
6. On information and belief, Applicant does not use the phrase "the future of bodybuilding" in a manner that functions to identify Applicant's goods or distinguish them from those offered by others.
7. On information and belief, Applicant's use of the phrase "the future of bodybuilding" for the Subject Goods creates the commercial impression that the consumer is purchasing a product that is the leading edge or charts new territory with Applicant's nutritional

supplements.

8. On information and belief, the phrase “the future of bodybuilding” is laudatory and/or merely descriptive of a function or feature of the Subject Goods.
9. The phrase is generic as used in connection with the Subject Goods.
10. On information and belief, at the time of filing its application at issue, Applicant did not have *bona fide* intent to use the phrase in a manner that functions to identify Applicant's goods and distinguish them from those offered by others.
11. Opposers distribute dietary and nutritional supplements.
12. Opposers are likely to be damaged by the registration of the mark “the future of bodybuilding” because, *inter alia*, the effect of such a registration tends to impair Opposers’ right to use the laudatory, common, descriptive, generic phrase “the future of bodybuilding”, and similar such phrases, in connection with Opposers’ nutritional supplements.
13. Accordingly, application Serial No. 76/652,161 should be refused under the provisions of the Lanham Act.

WHEREFORE, Opposers pray that Application Serial No. 76/652,161 be rejected, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposers.

This Notice of Opposition is being filed in duplicate, pursuant to 37 C.F.R. Section 2.104(a). Please charge the filing fee of \$300.00, and any other fees associated with this proceeding to Deposit Account 11-0600.

Respectfully submitted,

Iovate Health Sciences International Inc.
Iovate Health Sciences U.S.A. Inc.
Opposers

Dated: December 22, 2006

By: /Howard J. Shire/
Howard J. Shire
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New York, NY 10004

Counsel for Opposers