

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

Econugenics, Inc.	)	Opposition No. 91175718	77049612
	)		
Opposer,	)	OPPOSER'S MOTION FOR	
	)	SUMMARY JUDGMENT; AND	
v.	)	<u>MEMORANDUM IN SUPPORT</u>	
	)		
NextWave Pharmaceuticals, Inc.	)		
	)		
Applicant	)		
_____	)		

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Opposer moves the Board for an Order Granting Summary Judgment in its favor on the ground that the mark that it the subject of this Opposition, MYKIDZ IRON FL, is confusingly similar to Opposer's about to be registered trademark MYCOKIDZ and registration of applicant's mark is likely to cause confusion in the marketplace.

As grounds for this Motion, Opposer relies on the file of Opposer's Application Serial No. 78/863809 for the trademark MYCOKIDZ which is attached to the Opposer's Notice of Reliance filed contemporaneously with this Motion.

There are no genuine issues of material fact precluding Summary Judgment in favor of Petitioner as follows:

1. Opposer is the owner of United States Trademark Application Serial No. 78/863809 for the trademark MYCOKIDZ for dietary supplements for which an Allegation of Use has been filed and accepted and which will register shortly. The mark has been used by the Opposer since December, 2006.

2. Applicant is the owner of United States Trademark Application Serial No. 77049612 for the mark MYKIDZ IRON FL for vitamin and mineral supplements with fluoride. The terms "IRON" and "FL" are disclaimed from the mark. The application was filed on November 22, 2006 based upon a bona-fide intent to use.



3. Opposer's about to be registered mark MYCOKIDZ and applicant's applied-for mark MYKIDZ IRON FL are identical in respect to the dominant element of each mark, namely the terms "MY" and "KIDZ".

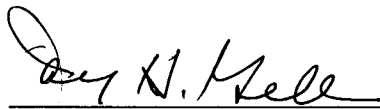
4. The goods on which Opposer uses its mark MYCOKIDZ, dietary supplements, and the goods on which Applicant intends to use the mark MYKIDZ IRON FL are identical

5. There is a likelihood of confusion in the marketplace between Applicant's intended use of the mark MYKIDZ IRON FL on nutritional supplements and Opposer's use of the mark MYCOKIDZ with its dietary food supplements.

6. Registration of applicant's mark will cause damage to Opposer.

Wherefore, Opposer prays that the Board grant its Motion and deny registration to Applicant. A memorandum is filed in support of this Motion and the Notice of Reliance is filed contemporaneously with this Motion.

Dated: April 19, 2007



---

Jay H. Geller  
Jay H. Geller, a Professional  
Corporation  
West Tower, Suite 4000  
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Santa Monica, CA 90404  
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Attorneys for Opposer

## MEMORANDUM IN SUPPORT

### I. FACTUAL BACKGROUND

Opposer is the owner of United States Trademark Application Serial No. 78/863809 for the trademark MYCOKIDZ for dietary supplements for which an Allegation of Use has been filed and accepted and which will register shortly. The mark has been used by the Opposer since December, 2006. (Notice of Reliance).

Applicant is the owner of United States Trademark Application Serial No. 77049612 for the mark MYKIDZ IRON FL for vitamin and mineral supplements with fluoride. The terms "IRON" and "FL" are disclaimed from the mark. The application was filed on November 22, 2006 based upon a bona-fide intent to use (File in this case).

Opposer's about to be registered mark MYCOKIDZ and applicant's applied-for mark MYKIDZ IRON FL are identical in respect to the dominant element of each mark, namely the terms "MY" and "KIDZ". The goods on which Opposer uses its mark MYCOKIDZ, dietary supplements, and the goods on which Applicant intends to use the mark MYKIDZ IRON FL are identical

There is a likelihood of confusion in the marketplace between Applicant's intended use of the mark MYKIDZ IRON FL on nutritional supplements and Opposer's use of the mark MYCOKIDZ with its dietary food supplements.

### ARGUMENT

The law applicable to a determination of likelihood of confusion is clear. It is well settled that the relevant test is *likelihood of confusion*, not actual confusion. It is unnecessary to show actual confusion to establish likelihood of confusion. *Weiss*

*Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 1549, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990), and cases cited therein.

If the marks of the respective parties are identical, as they are here for all intents and purposes (i.e., the dominant features “MY” and “KIDZ”), the relationship between the goods or services need not be as close to support a finding of likelihood of confusion as would be required in a case where there are differences between the marks. *Ancor, Inc. v. Ancor Industries, Inc.*, 210 USPQ 70, 78 (TTAB 1981). In this case, the goods are identical. If there is any doubt as to whether there is a likelihood of confusion, that doubt must be resolved in favor of the prior registrant. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio), Inc.* 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

On its face, it is clear that there is a likelihood of confusion. With the goods being identical and the dominant feature of the two marks being “MY” and “KIDZ”, it is clear that there is a likelihood of confusion in the marketplace. Since Opposer has superior rights to a mark for dietary supplements with “MY” and “KIDZ”, registration should be refused to Applicant.

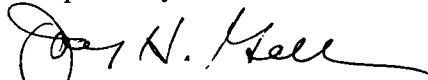
#### CONCLUSION

Here, because the marks are identical in terms of the primary element of each mark, and the goods are identical, there is no genuine issue of material fact precluding a finding that there is a likelihood of confusion in the marketplace between Opposer’s use of its about to be registered mark on its dietary food supplements and Applicant’s use of

the mark MYKIDZ IRON FL. Since there is no genuine issue of material fact on this issue, as a matter of law, there is a likelihood of confusion between Opposer's use of MYCOKIDZ and Applicant's intended use of MYKIDZ IRON FL and registration to Applicant should be refused.

Dated: April 19, 2007

Respectfully submitted,



Jay H. Geller

Jay H. Geller, a Professional  
Corporation

West Tower, Suite 4000

2425 W. Olympic Bl.

Santa Monica, CA 90404

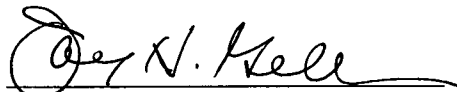
P: 310-449-1399

F: 310-449-1394

E: [jhgeller@aol.com](mailto:jhgeller@aol.com)

Attorneys for Opposer

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Tamara A. Miller, Leydig, Voit & Mayer, Ltd., suite 4900, Two Prudential Plaza, 180 N. Stetson Avenue, Chicago, IL 60601-6731.



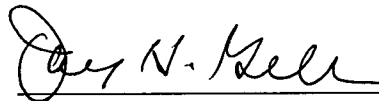
Jay H. Geller

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

Econugenics, Inc.	)	Opposition No. 91175718
	)	
Opposer,	)	OPPOSER'S NOTICE
	)	<u>OF RELIANCE -----</u>
v.	)	
	)	
NextWave Pharmaceuticals, Inc.	)	
	)	
Applicant	)	
_____	)	

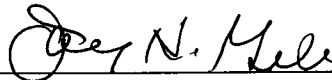
Opposer gives Notice that it is relying on the file of Application Serial Number 78863809 for its application to register the trademark MYCOKIDZ which is attached hereto.

Dated: April 19, 2007



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Corporation  
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Jay H. Geller

# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 78863809

Filing Date: 04/18/2006

**NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.**

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
<b>MARK INFORMATION</b>	
*MARK	MYCOKIDZ
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MYCOKIDZ
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Econugenics, Inc.
*STREET	2208 Northpoint Parkway
*CITY	Santa Rosa
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	95407
AUTHORIZED TO COMMUNICATE VIA EMAIL	No
<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	CORPORATION
*STATE/COUNTRY OF INCORPORATION	California
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	005
*DESCRIPTION	Dietary food supplements; Dietary supplements; Herbal supplements; Nutritional supplements; Vitamin and mineral supplements; Vitamin supplements

\*FILING BASIS

SECTION 1(b)

**ADDITIONAL STATEMENTS INFORMATION**

\*TRANSLATION  
(if applicable)

\*TRANSLITERATION  
(if applicable)

\*CLAIMED PRIOR REGISTRATION  
(if applicable)

\*CONSENT (NAME/LIKENESS)  
(if applicable)

\*CONCURRENT USE CLAIM  
(if applicable)

**ATTORNEY INFORMATION**

NAME

Jay H. Geller

STREET

W. Tower, Suite 4000, 2425 W. Olympic Bl.

CITY

Santa Monica

STATE

California

COUNTRY

United States

ZIP/POSTAL CODE

90404

PHONE

310-449-1399

FAX

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EMAIL ADDRESS

jhgeller@aol.com

AUTHORIZED TO COMMUNICATE VIA EMAIL

Yes

**CORRESPONDENCE INFORMATION**

\*NAME

Jay H. Geller

\*STREET

W. Tower, Suite 4000, 2425 W. Olympic Bl.

\*CITY

Santa Monica

\*STATE  
(Required for U.S. applicants)

California

\*COUNTRY

United States

\*ZIP/POSTAL CODE  
(Required for U.S. applicants only)

90404

PHONE

310-449-1399

FAX

310-449-1394

\*EMAIL ADDRESS

jhgeller@aol.com

\*AUTHORIZED TO COMMUNICATE VIA EMAIL

Yes

**FEE INFORMATION**

NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275

**SIGNATURE INFORMATION**

* SIGNATURE	/ieliaz/
* SIGNATORY NAME	Isaac Eliaz
SIGNATORY POSITION	President
* SIGNATURE DATE	04/18/2006

**FILING INFORMATION SECTION**

SUBMIT DATE	Tue Apr 18 15:32:11 EDT 2006
-------------	------------------------------

TEAS STAMP	USPTO/FTK-207.200.116.68- 2006041815321119795-7886 3809-30031cdd8cc49591e78c 1735b46dc5509e-CC-192-200 60418153029104887
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**Trademark/Service Mark Application, Principal Register****TEAS Plus Application****Serial Number: 78863809****Filing Date: 04/18/2006**

To the Commissioner for Trademarks:

**MARK: MYCOKIDZ** (Standard Characters, see mark)

The literal element of the mark consists of MYCOKIDZ. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Econugenics, Inc., a corporation of California, residing at 2208 Northpoint Parkway, Santa Rosa, California, United States, 95407, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 005: Dietary food supplements; Dietary supplements; Herbal supplements; Nutritional supplements; Vitamin and mineral supplements; Vitamin supplements

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign

application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

The applicant hereby appoints Jay H. Geller, W. Tower, Suite 4000, 2425 W. Olympic Bl., Santa Monica, California, United States, 90404 to submit this application on behalf of the applicant.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: jhgeller@aol.com.

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ieliaz/ Date: 04/18/2006

Signatory's Name: Isaac Eliaz

Signatory's Position: President

Mailing Address:

Jay H. Geller

W. Tower, Suite 4000, 2425 W. Olympic Bl.

Santa Monica, California 90404

RAM Sale Number: 192

RAM Accounting Date: 04/19/2006

Serial Number: 78863809

Internet Transmission Date: Tue Apr 18 15:32:11 EDT 2006

TEAS Stamp: USPTO/FTK-207.200.116.68-200604181532111

19795-78863809-30031cdd8cc49591e78c1735b

46dc5509e-CC-192-20060418153029104887

**MYCOKIDZ**



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

Jul 12, 2006

**NOTICE OF PUBLICATION UNDER 12(a)**

1. Serial No.:  
78/863,809
2. Mark:  
MYCOKIDZ  
Standard Character Mark
3. International Class(es):  
5
4. Publication Date:  
Aug 1, 2006
5. Applicant:  
Econugenics, Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

JAY H. GELLER  
W. TOWER, SUITE 4000, 2425 W. OLYMPIC BL  
SANTA MONICA, CA 90404

TMP&I

U.S. Patent and Trademark Office (USPTO)

**NOTICE OF ALLOWANCE**

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Oct 24, 2006

JAY H. GELLER  
W. TOWER, SUITE 4000, 2425 W. OLYMPIC BL  
SANTA MONICA, CA 90404

**\*\* IMPORTANT INFORMATION: 6 MONTH DEADLINE \*\***

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use " and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

**The following information should be reviewed for accuracy:**

SERIAL NUMBER: 78/863809  
MARK: MYCOKIDZ (STANDARD CHARACTER MARK)  
OWNER: Econugenics, Inc.  
2208 Northpoint Parkway  
Santa Rosa , CALIFORNIA 95407

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

**GOODS/SERVICES BY INTERNATIONAL CLASS**

005 - Dietary food supplements; Dietary supplements; Herbal supplements; Nutritional supplements; Vitamin and mineral supplements; Vitamin supplements -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

USPTO/SOU-207.200.116.66-  
20070105145611152673-7886  
3809-3604f4b53c176c78be20  
61cfe99ef40fe-CC-1858-200  
70105145222144366

TEAS STAMP

**Trademark/Service Mark Statement of Use  
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

**MARK: MYCOKIDZ**

**SERIAL NUMBER: 78863809**

This Allegation of Use is being filed after a Notice of Allowance has issued.

The applicant, Econugenics, Inc., having an address of 2208 Northpoint Parkway, Santa Rosa, California United States 95407, is using or is using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class: 005, the applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 12/26/2006, and first used in commerce at least as early as 12/29/2006, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Unit carton for the goods.

Specimen-1

The applicant hereby appoints Jay H. Geller to submit this Trademark/Service Mark Statement of Use on behalf of the applicant.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

**Declaration**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /ielias/ Date Signed: 01/05/2007

Signatory's Name: Isaac Elias

Signatory's Position: President

RAM Sale Number: 1858

RAM Accounting Date: 01/05/2007

Serial Number: 78863809

Internet Transmission Date: Fri Jan 05 14:56:11 EST 2007  
TEAS Stamp: USPTO/SOU-207.200.116.66-200701051456111  
52673-78863809-3604f4b53c176c78be2061cfe  
99ef40fe-CC-1858-20070105145222144366  
[Go Back](#)

EcoNugenics®

tear here

ORGANIC  
FAIR  
TRADE  
COCOA

# mycokidz™ wellness formula

nutritional & immune support\*



for kids

organic cocoa with  
natural antioxidant action

Dietary Supplement  
30 Packets 13 grams

**Suggested Use:** MycoKidz™ is delicious when mixed in warm milk, rice or soy milk. Simply pour one full packet into eight ounces of the drink of your choice, stir well and enjoy! It's also excellent over your favorite cereal, toast, or food.

tear here

Supplement Facts		
Serving Size 1 Packet Servings Per Container 30		
	Amount Per Serving	% Daily Value*
Calories	35	
Calories from Fat	10	
Total Fat	1 g	2%
Trans Fat	0 mg	0%
Sodium	30 mg	1%
Potassium	220 mg	6%
Total carbohydrate	8 g	3%
Dietary fiber	2 g	8%
Sugar	4 g	†
Protein	3 g	6%
Vitamin A (as beta-carotene, palmitate)	5000 IU	100%
Vitamin C (as ascorbic acid, calcium ascorbate)	150 mg	250%
Vitamin D3 (as cholecalciferol)	300 IU	75%
Vitamin E (as d-alpha-tocopherol succinate, mixed tocopherols)	35 IU	120%
Vitamin K	40 mcg	50%
Thiamin (Vitamin B1 as thiamine mononitrate)	10 mg	670%
Riboflavin (Vitamin B2)	10 mg	590%
Niacin (Vitamin B3 as niacinamide)	20 mg	100%
Vitamin B6 (as pyridoxine hydrochloride)	20 mg	1000%
Folate (Vitamin B9 as folic acid)	400 mcg	100%
Vitamin B12 (as methylcobalamin)	25 mcg	420%
Biotin (Vitamin B7)	200 mcg	70%
Pantothenic acid (Vitamin B5 as calcium pantothenate)	10 mg	100%
Calcium (as hydroxyapatite, citrate)	125 mg	15%
Iron (as ferrous fumarate)	2 mg	10%
Iodine (as potassium iodide)	150 mcg	100%
Magnesium (as glycinate, citrate)	100 mg	25%
Zinc (as D-lysine zinc, acetate, picolinate)	10 mg	70%
Selenium (as L-selenomethionine)	50 mcg	70%
Copper (as setbacate)	1 mg	50%
Manganese (as sulfate)	1 mg	50%
Chromium (as ChromaMate®)	60 mcg	50%
Molybdenum	40 mcg	50%
MycoKidz™ Proprietary blend of USDA certified organic mushrooms	105 mg	†
Reishi (Ganoderma lucidum), portia (Portia cocos), shiitake (Lentinula edodes)		
Organic Fair Trade Cocoa	4g	†
Borage Seed Oil	250 mg	†
Flax Seed Oil	250 mg	†
L-Taurine	25 mg	†
Bilberry fruit extract	10 mg	†

\* Percent Daily Values based on a 2,000 calorie diet for children 4 or more years of age. † Daily Value not established.

EcoNugenics® Certified organic pure cane juice, CitriSweet™, guar/xanthan, and natural chocolate flavor. CitriSweet™, CitriSweet™, CitriSweet™ are registered trademarks of InterHealth, N.I.

EcoNugenics®, Inc.  
Santa Rosa, CA 95407  
econugenics.com

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	)	SUMMARY JUDGMENT; AND
v.	)	<u>MEMORANDUM IN SUPPORT</u>
	)	
NextWave Pharmaceuticals, Inc.	)	
	)	
Applicant	)	
_____	)	

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Opposer moves the Board for an Order Granting Summary Judgment in its favor on the ground that the mark that it the subject of this Opposition, MYKIDZ IRON FL, is confusingly similar to Opposer's about to be registered trademark MYCOKIDZ and registration of applicant's mark is likely to cause confusion in the marketplace.

As grounds for this Motion, Opposer relies on the file of Opposer's Application Serial No. 78/863809 for the trademark MYCOKIDZ which is attached to the Opposer's Notice of Reliance filed contemporaneously with this Motion.

There are no genuine issues of material fact precluding Summary Judgment in favor of Petitioner as follows:

1. Opposer is the owner of United States Trademark Application Serial No. 78/863809 for the trademark MYCOKIDZ for dietary supplements for which an Allegation of Use has been filed and accepted and which will register shortly. The mark has been used by the Opposer since December, 2006.

2. Applicant is the owner of United States Trademark Application Serial No. 77049612 for the mark MYKIDZ IRON FL for vitamin and mineral supplements with fluoride. The terms "IRON" and "FL" are disclaimed from the mark. The application was filed on November 22, 2006 based upon a bona-fide intent to use.