

ESTTA Tracking number: **ESTTA136662**

Filing date: **04/20/2007**

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

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|---------------------------------------|---|
| Name | Novartis AG |
| Granted to Date of previous extension | 04/25/2007 |
| Address | Postfache 4002 Basel, SWITZERLAND |

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| Domestic Representative | Peter S. Sloane, Esq. Ostrolenk, Faber, Gerb & Soffen, LLP 1180 Avenue of the Americas New York, NY 10036-8403 UNITED STATES psloane@ostrolenk.com, squigley@ostrolenk.com Phone:212-382-0700 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 78730037 | Publication date | 12/26/2006 |
| Opposition Filing Date | 04/20/2007 | Opposition Period Ends | 04/25/2007 |
| Applicant | Natural Alternatives International, Inc. 1185 Linda Vista Drive San Marcos, CA 92078 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 005. First Use: 2005/10/10 First Use In Commerce: 2005/10/10
All goods and services in the class are opposed, namely: Dietary supplements not related to the processing of blood or blood components; nutritional supplements not related to the processing of blood or blood components

| | |
|-------------|---|
| Attachments | 00835275.pdf (3 pages)(101245 bytes) |
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| | |
|-----------|--------------------------|
| Signature | /sjq/ |
| Name | Stephen J. Quigley, Esq. |
| Date | 04/20/2007 |

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

In the Matter of Application Serial No. 78/730,037
Published in the Official Gazette on December 26, 2006

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|----------------------|---|----------------|
| NOVARTIS AG, | X | |
| | : | |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | Opposition No. |
| | : | |
| NATURAL ALTERNATIVES | : | |
| INTERNATIONAL, INC., | : | |
| | : | |
| Applicant. | : | |
| | X | |

NOTICE OF OPPOSITION

Opposer, Novartis AG, a corporation organized and existing under the laws of Switzerland, having a legal address at Postfache 4002, Basel, Switzerland, believes that it would be damaged by the issuance of a registration for the trademark THERAFLEX as applied for in Application Serial No. 78/730,037, filed October 10, 2005, for “dietary supplements not related to the processing of blood or blood components; nutritional supplements not related to the processing of blood or blood components” in International Class 5, and therefore opposes the same. As grounds for its opposition, Opposer, by its attorneys Ostrolenk, Faber, Gerb & Soffen, LLP, alleges as follows:

1. Since well prior to the October 10, 2005 filing date of Applicant's application, and the October 10, 2005 date of first use claimed therein, Opposer has used the mark THERAFLU for cough and cold preparations in commerce in the United States. Opposer has used the mark THERAFLU since at least as early as 1986.

2. Opposer has invested a substantial amount of time, effort and resources in promoting the mark THERAFLU, which is extremely well-known among the consuming public.

As a result, the mark has become distinctive of Opposer's goods and has come to represent enormous goodwill for Opposer.

3. Opposer owns U.S. Trademark Registration No. 1,452,879, issued on August 18, 1987, of the mark THERAFLU for "cough and cold preparation" in Class 5. Opposer's registration date is well prior to the filing date of Applicant's application and the date of first use claimed therein. Opposer's registration is valid, subsisting, in full force and effect and is incontestable.

4. Opposer also owns U.S. Trademark Registration No. 2,744,823, issued on July 29, 2003, of the mark THERAFLU VAPOR STICK for "cough and cold medicine" in Class 5. Opposer's registration date is prior to the filing date of Applicant's application and the date of first use claimed therein. Opposer's registration is valid, subsisting, and in full force and effect.

5. On August 12, 2005, Opposer filed U.S. Trademark Application No. 78/691,505 of the mark THERAFLU THIN STRIPS for "cough, cold and allergy preparations" in Class 5. The filing date of Opposer's application is prior to the filing date of Applicant's application and the date of first use claimed therein.

6. On October 10, 2005, Applicant, Natural Alternatives International, Inc., filed Application No. 78/730,037 to register the mark THERAFLEX in Class 5 based upon a claim of first use since at least as early as October 10, 2005.

7. The overall mark that Applicant seeks to register is nearly identical to Opposer's mark THERAFLU, and the subject goods are closely related to the goods for which Opposer has previously used and registered its mark.

8. For the above reasons, the registration of the mark THERAFLEX by Applicant is likely to cause confusion, cause mistake or deceive the public as to the source of the goods in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

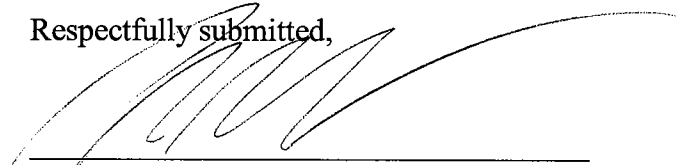
9. By reason of the foregoing, Opposer will be damaged by the registration of the mark THERAFLEX to Applicant.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 78/730,037 be denied.

The opposition fee in the amount of \$300.00 for one class is filed herewith. If for any reason this amount is insufficient, it is requested that Opposer's attorneys' deposit account No. 15-0700 be charged with any deficiency.

Date: April 20, 2007
New York, New York

Respectfully submitted,



Peter S. Sloane
Stephen J. Quigley

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Attorneys for Opposer