

ESTTA Tracking number: **ESTTA194070**

Filing date: **02/21/2008**

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	Ganeden Biotech, Inc.
Granted to Date of previous extension	02/24/2008
Address	5915 Landerbrook Drive Suite 304 Mayfield Heights, OH 44124 UNITED STATES
Correspondence information	Susan E. Clady Attorney of record Benesch Friedlander Coplan & Aronoff LLP 200 Public Square Suite 2300 Cleveland, OH 44114 UNITED STATES trademark@bfca.com, sclady@bfca.com Phone:(216) 363-4152

Applicant Information

Application No	77108566	Publication date	08/28/2007
Opposition Filing Date	02/21/2008	Opposition Period Ends	02/24/2008
Applicant	Innate Choice Wellness Nutrition Inc. 431 Durban Street Victoria, V8S3K2 CANADA		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: dietary and nutritional supplements
Class 016. All goods and services in the class are opposed, namely: printed matter, namely, brochures and newsletters in the field of health, wellness and nutrition
Class 035. All goods and services in the class are opposed, namely: wholesale distributorship, wholesale ordering, retail store, online retail store, and mail order services in the field of dietary and nutritional supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FOR EVERY BODY EVERY DAY		
Goods/Services	dietary and nutritional supplements; and probiotics		

Attachments	1504471_1_2_.pdf (1 page)(8795 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Susan E. Clady/
Name	Susan E. Clady
Date	02/21/2008

Ganeden Biotech, Inc. (“Opposer”), a Delaware corporation, having a business location at 5915 Landerbrook Drive, Suite 304, Mayfield Heights, Ohio 44124, believes that it will be damaged by the registration of the mark shown in the application of Innate Choice Wellness Nutrition Inc. (“Applicant”), Serial No. 77/108,566, and hereby opposes registration of such mark on the following grounds:

1. Applicant seeks to register EVERYBODY EVERYDAY FOR LIFE as a mark for “dietary and nutritional supplements” in International Class 5; “printed matter, namely, brochures and newsletters in the field of health, wellness and nutrition” in International Class 16; and “wholesale distributorship, wholesale ordering, retail store, online retail store, and mail order services in the field of dietary and nutritional supplements” in Class 35, each based on an intent to use. Applicant’s application was filed on February 15, 2007.
2. Opposer has for many years been engaged, and presently is engaged, in providing a variety of food and/or nutritional supplements.
3. Opposer is the owner of the mark FOR EVERY BODY EVERY DAY and has priority with respect to the mark in issue.
4. Opposer objects to Applicant's trademark Application Serial No. 77/108,566, for EVERYBODY EVERYDAY FOR LIFE, as it so resembles Opposer’s prior mark as to be likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d); and more particularly, Applicant’s registration and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that Applicant’s goods originate with or otherwise are authorized, licensed, or sponsored by Opposer or are in some way connected or affiliated with Opposer. Further, any defect, objection or fault found by the trade or public with goods marketed under the mark EVERYBODY EVERYDAY FOR LIFE would negatively impact and injure the reputation that Opposer has established for goods sold by Opposer under its mark FOR EVERY BODY EVERY DAY.
5. If Applicant is granted the registration sought by application Serial No. 77/108,566, it would obtain at least a prima facie exclusive right to use the mark EVERYBODY EVERYDAY FOR LIFE for “dietary and nutritional supplements” in International Class 5; “printed matter, namely, brochures and newsletters in the field of health, wellness and nutrition” in International Class 16; and “wholesale distributorship, wholesale ordering, retail store, online retail store, and mail order services in the field of dietary and nutritional supplements” in Class 35. Such a registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that Application Serial No. 77/108,566, for the mark EVERYBODY EVERYDAY FOR LIFE, be refused.