

ESTTA Tracking number: **ESTTA255219**

Filing date: **12/16/2008**

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	DSM IP Assets B.V.		
Entity	besloten vennootschap	Citizenship	The Netherlands
Address	Het Overloon 1 Heerlen, NL-6411 TE NETHERLANDS		

Attorney information	Duane M. Byers Nixon & Vanderhye 901 N. Glebe Road, Suite 1100 Arlington, VA 22203 UNITED STATES nixonptomail@nixonvan.com, dmb@nixonvan.com Phone:7038164009		
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Applicant Information

Application No	77489829	Publication date	12/16/2008
Opposition Filing Date	12/16/2008	Opposition Period Ends	01/15/2009
Applicant	Matthew Kulka 1703 Langhorne-Newtown Road Langhorne, PA 19047 UNITED STATES		

Goods/Services Affected by Opposition

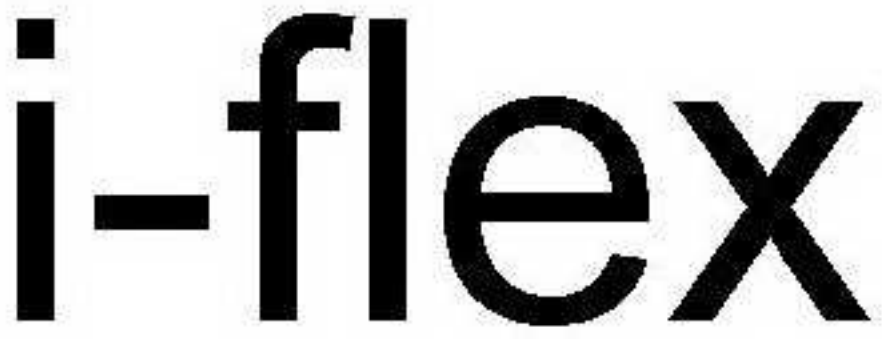
Class 028. All goods and services in the class are opposed, namely: Exercise machines; Manually-operated exercise equipment; Personal exercise mats
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3468122	Application Date	03/12/2007
Registration Date	07/15/2008	Foreign Priority Date	01/19/2007
Word Mark	I-FLEX		

Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 005. First use: Dietetic preparations and substances adapted for medical use, namely, dietetic foods adapted for medical use, dietary and nutritional supplements; food supplements for medical use; dietetic beverages adapted for medical purposes; vitamins; vitamin preparations; natural medicines, namely, natural pharmaceutical preparations for the treatment and prevention of osteoarthritis and similar conditions, namely, treating and preventing flexibility or mobility conditions</p> <p>Class 029. First use: Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; edible oils</p> <p>Class 030. First use: Flour; preparations made from cereals, namely, breakfast cereals, ready to eat cereal derived food bars; bread, pastry; biscuits; cookies; tea; tea-based beverages</p> <p>Class 031. First use: Flower, fruit, wheat seeds; natural plants and flowers; fresh fruits and vegetables</p> <p>Class 032. First use: Mineral and aerated waters; syrups for making beverages; preparations for making fruit drinks, fruit juices, mineral and aerated waters, syrups for making beverages, non-alcoholic sport drinks in the nature of soft drinks; non-alcoholic energy drinks; fruit drinks and fruit juices; non-alcoholic sport drinks in the nature of soft drinks</p>
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U.S. Registration No.	3445050	Application Date	11/08/2007
Registration Date	06/10/2008	Foreign Priority Date	09/07/2007

Word Mark	I-FLEX ... I CAN FLEX FREELY
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Design Mark	
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Description of Mark	The mark consists of the terms "i-flex ... i can flex freely" in stylized form.
Goods/Services	<p>Class 005. First use: Dietetic preparations and substances adapted for medical use, namely, dietetic foods adapted for medical use, dietary and nutritional supplements; food supplements for medical use; dietetic beverages adapted for medical purposes; vitamins; vitamin preparations; natural medicines, namely, natural pharmaceutical preparations for the treatment and prevention of osteoarthritis and similar conditions, namely, treating and preventing flexibility or mobility conditions</p> <p>Class 029. First use: Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; edible oils</p> <p>Class 030. First use: Flour; preparations made from cereals, namely, breakfast cereals, ready to eat cereal derived food bars; bread, pastry; biscuits; cookies; tea; tea-based beverages</p> <p>Class 031. First use: Flower, fruit, wheat seeds; natural plants and flowers; fresh fruits and vegetables</p> <p>Class 032. First use: Mineral and aerated waters; syrups for making beverages; preparations for making fruit drinks, fruit juices, mineral and aerated waters, syrups for making beverages, non-alcoholic sport drinks in the nature of soft drinks; non-alcoholic energy drinks; fruit drinks and fruit juices; non-alcoholic sport drinks in the nature of soft drinks</p>

Related Proceedings	91187768
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Attachments	79039242#TMSN.jpeg (1 page)(bytes) 77325256#TMSN.jpeg (1 page)(bytes) d 4662-978 opp notice.pdf (5 pages)(80156 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	/Duane M. Byers/
Name	Duane M. Byers
Date	12/16/2008

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

_____)	
DSM IP Assets B.V.)	
)	
Opposer)	
)	
v.)	Opposition No. _____
)	Application Serial No. 77489829
Matthew Kulka, D.O.)	
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Opposer, DSM IP Assets B.V., a besloten vennootschap, with a business address of Het Overloon 1, Heerlen, The Netherlands NL-6411 TE, hereby opposes registration of the mark IFLEX that is the subject of application Serial No. 77489829, published on December 16, 2008, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since prior to any date of first use upon which Applicant can rely, has contrived, adopted and used the term I-FLEX as a trademark for health related goods.
2. Opposer is the owner of U.S. Trademark Registration No. 3468122 for the I-FLEX trademark covering:

Class 5 - Dietetic preparations and substances adapted for medical use, namely, dietetic foods adapted for medical use, dietary and

nutritional supplements; food supplements for medical use; dietetic beverages adapted for medical purposes; vitamins; vitamin preparations; natural medicines, namely, natural pharmaceutical preparations for the treatment and prevention of osteoarthritis and similar conditions, namely, treating and preventing flexibility or mobility conditions,

Class 29 - Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; edible oils,

Class 30 - Flour; preparations made from cereals, namely, breakfast cereals, ready to eat cereal derived food bars; bread, pastry; biscuits; cookies; tea; tea-based beverages,

Class 31 - Flower, fruit, wheat seeds; natural plants and flowers; fresh fruits and vegetables, and

Class 32 - Mineral and aerated waters; syrups for making beverages; preparations for making fruit drinks, fruit juices, mineral and aerated waters, syrups for making beverages, non-alcoholic sport drinks in the nature of soft drinks; non-alcoholic energy drinks; fruit drinks and fruit juices; non-alcoholic sport drinks in the nature of soft drinks.

This registration is valid, subsisting, unrevoked and uncanceled.

3. Opposer is the owner of U.S. Trademark Registration No. 3445050 for the stylized “i-flex ... i can flex freely” trademark (one of Opposer’s “I-FLEX trademarks”) covering:

Class 5 - Dietetic preparations and substances adapted for medical use, namely, dietetic foods adapted for medical use, dietary and nutritional supplements; food supplements for medical use; dietetic beverages adapted for medical purposes; vitamins; vitamin preparations; natural medicines, namely, natural pharmaceutical preparations for the treatment and prevention of osteoarthritis and similar conditions, namely, treating and preventing flexibility or mobility conditions,

Class 29 - Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; edible oils,

Class 30 - Flour; preparations made from cereals, namely, breakfast cereals, ready to eat cereal derived food bars; bread, pastry; biscuits; cookies; tea; tea-based beverages,

Class 31 - Flower, fruit, wheat seeds; natural plants and flowers; fresh fruits and vegetables, and

Class 32 - Mineral and aerated waters; syrups for making beverages; preparations for making fruit drinks, fruit juices, mineral and aerated waters, syrups for making beverages, non-alcoholic sport drinks in the nature of soft drinks; non-alcoholic energy drinks; fruit drinks and fruit juices; non-alcoholic sport drinks in the nature of soft drinks.

This registration is valid, subsisting, unrevoked and uncancelled.

4. Applicant has filed an application to register the mark IFLEX PRODUCTS for health related goods, i.e., "Exercise machines; Manually-operated exercise equipment; Personal exercise mats," in Class 32. The application was filed on June 3, 2008, and was assigned Serial No. 77489829. The application was filed as an "intent to use" trademark application. No statement of use has been filed. The Applicant has disclaimed the term "PRODUCTS" in its trademark. The USPTO assigned "I FLEX PRODUCTS" as a pseudo mark to the Applicant's mark.

5. Applicant's IFLEX PRODUCTS trademark for health related goods so resembles Opposer's previously used and registered I-FLEX trademarks for health related goods as to be likely, when used in connection with or in association with the health related goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act. Among other things, consumers are likely to believe that Applicant is somehow associated with, affiliated with, or licensed by Opposer in view of Opposer's usage and/or registration of its I-FLEX trademarks and Applicant's usage or intended usage of the IFLEX PRODUCTS trademark on similar or related goods.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Date: December 16, 2008

Respectfully submitted,

/Duane M. Byers/

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