

ESTTA Tracking number: **ESTTA264330**

Filing date: **02/03/2009**

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	CytoSport, Inc.		
Entity	Corporation	Citizenship	CA
Address	4795 Industrial Way Benicia, CA 94510 UNITED STATES		

Attorney information	Gordon K. Hill Thorpe North & Western, LLP 8180 S. 700 E., Suite 350 Sandy, UT 84070 UNITED STATES hill@tnw.com, sisneros@tnw.com, docket@tnw.com		
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Applicant Information

Application No	78825262	Publication date	01/13/2009
Opposition Filing Date	02/03/2009	Opposition Period Ends	02/12/2009
Applicant	GUNA Inc. Sky View Center 150 B 1520 Tramway Blvd. NE Albuquerque, NM 87123 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1995/00/00 First Use In Commerce: 2006/02/28 All goods and services in the class are opposed, namely: Pharmaceutical preparations for infectious diseases
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Grounds for Opposition

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

U.S. Registration No.	2103527	Application Date	11/04/1996
Registration Date	10/07/1997	Foreign Priority Date	NONE
Word Mark	CYTOMAX		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1989/07/31 First Use In Commerce: 1989/07/31 fruit flavored nutritional supplement for use in performance athletic training		
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U.S. Application No.	78723455	Application Date	09/29/2005
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	CYTOMAX CYCLE		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 005. First use: Dietary and nutritional supplement; powdered nutritional supplement for adding liquid beverage		
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Attachments	78723455#TMSN.jpeg (1 page)(bytes) 32865.PDF (4 pages)(65402 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	/Gordon K. Hill/
Name	Gordon K. Hill
Date	02/03/2009

Peter M. de Jonge
Gordon K. Hill
THORPE NORTH & WESTERN, L.L.P.
8180 South 700 East, Suite 350
Sandy, Utah 84070
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorneys for CytoSport, Inc.
Opposed Mark: CITOMIX
U.S. Trademark Application Serial Number 78/825,262

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

<p>CYTOSPORT, INC.,</p> <p>Opposer,</p> <p>v.</p> <p>GUNA, INC.,</p> <p>Applicant.</p>	<p>Opposition No. _____</p>
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NOTICE OF OPPOSITION

CytoSport, Inc. (hereinafter referred to as "Opposer"), a corporation existing under the laws of the State of California, having a principal place of business at 4795 Industrial Way, Benicia, California 94510, believes it will be damaged by the registration of the mark CITOMIX in Application Serial No. 78/825,262, and opposes and alleges the following:

1. Guna, Inc. (hereinafter referred to as "Applicant"), a corporation existing under the laws of the State of New Mexico, having a principal place of business at Sky View Center 150 B, 1520 Tramway Blvd. NE, Albuquerque, New Mexico 87123, seeks to register the mark

CITOMIX as a trademark for “pharmaceutical preparations for infectious diseases” in International Class 005.

2. Opposer is the owner of U.S. Trademark Registration No. 2,103,527, for the mark CYTOMAX, for use in connection with “fruit flavored nutritional supplement for use in performance athletic training” in International Class 005. Opposer is currently using and continuously used the mark CYTOMAX in Registration No. 2,103,527 in interstate commerce since at least as early as July of 1989.

3. Opposer is the owner of U.S. Trademark Application Serial No. 78/723,455, for the mark CYTOMAX CYCLE, for use in connection with “dietary and nutritional supplement; powdered nutritional supplement for adding liquid beverage” in International Class 005.

4. Opposer has built up substantial good will in its CYTOMAX mark.

5. Registration of Applicant’s mark CITOMIX is likely to damage Opposer in that Applicant’s mark, when used on or in connection with the identified goods, so resembles Opposer’s mark for CYTOMAX as to be likely to cause confusion, to cause mistake or to deceive. Such confusion is likely to falsely suggest a connection between Applicant and Opposer.

6. Upon information and belief, Applicant selected its mark with full knowledge of Opposer’s marks.

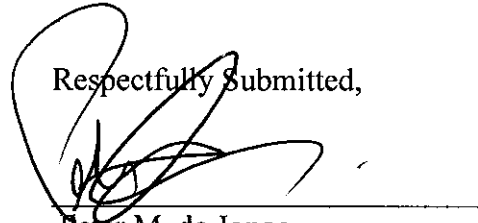
7. Since Opposer’s CYTOMAX mark is famous, and was famous prior to the filing of Applicant’s application, any use by Applicant of the mark applied for is likely to dilute the value of Opposer’s mark.

WHEREFORE, Opposer requests that Application Serial No. 78/825,262 be refused registration, that no registration be issued to Applicant for the mark CITOMIX and that this Opposition be sustained in favor of Opposer.

That statutory Opposition Filing Fee of \$300.00 per class opposed is included herewith. Please charge any additional fees and credit any overpayment to Deposit Account No. 20-0100.

DATED this 3rd day of February, 2009.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be "Peter M. de Jonge", written over a horizontal line.

Peter M. de Jonge
Gordon K. Hill

Attorneys for Opposer
CytoSport, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant by the method(s) indicated:

Guna, Inc.
Sky View Center 150 B
1520 Tramway Blvd., NE
Albuquerque, New Mexico 87123

- Hand Delivery
- United States Mail
- First Class, Postage Pre-Paid
- Overnight Delivery
- Electronic Mail
- Fax Transmission

Egon Landgraf
Holistica
4416 Glenwood Hills Dr., NE
Albuquerque, New Mexico 87111-4261

- Hand Delivery
- United States Mail
- First Class, Postage Pre-Paid
- Overnight Delivery
- Electronic Mail
- Fax Transmission

on this 3rd day of February, 2009.

