

ESTTA Tracking number: **ESTTA267538**

Filing date: **02/19/2009**

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	ConvaTec Inc.		
Entity	Corporation	Citizenship	Delaware
Address	200 Headquarters Park Drive Skillman, NJ 08558 UNITED STATES		

Attorney information	Thomas L. Holt Brinks Hofer Gilson & Lione NBC Tower, Suite 3600 455 N. Cityfront Plaza Dr. Chicago, IL 60611 UNITED STATES officeactions@brinkshofer.com Phone:312-321-4200
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Applicant Information

Application No	77559837	Publication date	01/20/2009
Opposition Filing Date	02/19/2009	Opposition Period Ends	02/19/2009
Applicant	Lifembraced Inc. 243 South Cedros Solana Beach, CA 92075 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 035. All goods and services in the class are opposed, namely: On-line advertising and marketing services; Dissemination of advertising for others via an on-line communications network on the internet; On-line business directories in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery; Providing an online directory information service featuring information in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery; Providing an on-line commercial information directory on the internet; Providing on-line directory information services also featuring hyperlinks to other web sites; Providing an on-line computer database in the field of locating products, describing products, rating products, pricing products and comparing prices of products; Providing a website where users can post ratings, reviews and recommendations on products and services; Providing a web site featuring product ratings of the consumer goods and services of others in the field of in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery; Advertising, marketing and promotional services related to all industries for the purpose of facilitating networking and socializing opportunities for business purposes; Price comparison services; Promoting the goods and services of others by providing a web site featuring coupons, rebates, price-comparison information, product reviews, links to the retail web sites of others, and discount information; Promoting the goods and services of others</p>
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by providing a community-driven web site featuring user-submitted content in the nature of coupons, rebates, price-comparison information, product review, links to the retail web sites of others, and discount information; Doctor referrals; General business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members; Promoting the goods and services of others through search engine referral traffic analysis and reporting; Referrals in the field of professional health care and medical services; On-line retail store services featuring books and a variety of products in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery


Class 038.


All goods and services in the class are opposed, namely: Streaming of video material on the Internet; Streaming of audio material on the Internet; Providing on-line electronic bulletin boards for transmission of messages among users concerning in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery; Transmission and distribution of data or audio visual images via a global computer network or the internet; Providing on-line forums for transmission of messages among computer users concerning in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery; Providing on-line chat rooms for transmission of messages among computer users concerning in the field of self-help, wellness, health, support, support groups, networking, growth, goal-setting, unity, achievement, relationships, connecting with one another, drugs, alcohol, and recovery


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. Application No.	77234384	Application Date	07/20/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIFE EMBRACE		
Design Mark			
Description of Mark	The color dark blue appears in the word LIFE; the color light blue appears in the word EMBRACE and in two of the stylized circles bisecting the word EMBRACE; and the colors green, purple, pink and beige each appear in two of the stylized circles bisecting the word EMBRACE in the mark.		
Goods/Services	Class 016. First use: Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care Class 044. First use: Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care		

U.S. Application No.	77234387	Application Date	07/20/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIFE EMBRACE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care</p> <p>Class 044. First use: Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care</p>		

U.S. Application No.	77236016	Application Date	07/23/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIFE EMBRACE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care</p> <p>Class 044. First use: Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care</p>		

Related Proceedings	Lifembraced Inc. v. ConvaTec Inc., Case No. 08 CV 2246 JM NLS (S.D. Cal.)
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Attachments	77234384#TMSN.jpeg (1 page)(bytes) 77234387#TMSN.jpeg (1 page)(bytes) 77236016#TMSN.jpeg (1 page)(bytes) Opposition - LIFEMBRACED.pdf (6 pages)(48753 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	/Thomas L. Holt./
Name	Thomas L. Holt
Date	02/19/2009

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

CONVATEC INC.,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Serial No. 77/559,837
)	
LIFEMBRACED INC.)	Mark: LIFEMBRACE
)	
)	Filing Date: September 1, 2008
)	
Applicant.)	NOTICE OF OPPOSITION
)	

ConvaTec Inc., a Delaware corporation with its place of business at 200 Headquarters Park Drive, Skillman, New Jersey 08558 (“ConvaTec”), believes that it will be damaged by registration of the mark LIFEMBRACE, Serial No. 77/559,837, filed on September 1, 2008 by Lifembraced Inc., a California corporation with a place of business at 243 South Cedros, Solana Beach, CA 92075. Upon information and belief, Lifembraced Inc. changed its name to One Recovery, Inc. since filing the LIFEMBRACE application. ConvaTec will still refer to Applicant herein as “Lifembraced.” ConvaTec hereby opposes registration of the LIFEMBRACE mark on the following grounds:

1. ConvaTec is a world leader in the development and marketing of medical technologies for community and hospital care, specializing in innovative wound therapeutics, ostomy care, continence and critical care, and infusion devices, all of which are marketed and sold in interstate commerce.

2. In July 2007, ConvaTec, through its predecessor in interest E.R. Squibb & Sons, L.L.C. (collectively “ConvaTec”), launched its LIFE EMBRACE™ program,

designed to provide health-related support and information to patients recovering from ostomy surgery. ConvaTec has invested considerable amounts of time, money, and effort in advertising, promoting, and marketing its health-related support and information services under the LIFE EMBRACE trademark throughout the United States and in establishing the LIFE EMBRACE services in the minds of consumers as high quality services offered by ConvaTec. To wit, ConvaTec has expended approximately \$1 million in developing, advertising, promoting, and marketing its services under the LIFE EMBRACE trademark. The LIFE EMBRACE trademark has been printed on a variety of materials, such as informational booklets, brochures, pamphlets, and DVDs relating to health care services.

3. The LIFE EMBRACE trademark is inherently distinctive. By reason of extensive use and promotion, ConvaTec's LIFE EMBRACE trademark has become favorably known among consumers as used in connection with ConvaTec's ostomy support and information services and has become a valuable asset as a symbol of ConvaTec, its quality services, and its goodwill.

4. ConvaTec has taken steps to protect the LIFE EMBRACE trademark in connection with its products and services, including filing federal trademark applications in the U.S. Patent and Trademark Office ("USTPO") as set forth below.

Trademark	Appln. Ser. No.	Filing Date	Goods/Services
	77/234,384	July 20, 2007	<p>Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care, in International Class 16; and</p> <p>Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care, in International Class 44.</p>
	77/234,387	July 20, 2007	<p>Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care, in International Class 16; and</p> <p>Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care, in International Class 44.</p>
	77/236,016	July 23, 2007	<p>Printed materials, namely, training manuals, informational booklets, brochures, pamphlets and newsletters in the field of ostomy care wound and skin care, in International Class 16; and</p> <p>Providing health information on-line to the medical community, patients, and the general public in the field of ostomy, wound, and skin care, in International Class 44.</p>

(collectively, the “LIFE EMBRACE Applications”). These applications were filed on an intent-to-use basis and the USPTO has since issued a notice of allowance in each application.

5. Notwithstanding ConvaTec's prior common law rights in the LIFE EMBRACE trademark used in connection with its ostomy health services and ConvaTec's pending LIFE EMBRACE Applications, on September 1, 2008, Lifembraced filed U.S. Federal Trademark Appln. Ser. No. 77/559,837 for the LIFEMBRACE mark in International Classes 35 and 38 covering a variety of services related to health, support group, wellness, and related services ("Health and Wellness Services").

6. Upon information and belief, Lifembraced's use of the confusingly similar LIFEMBRACE Mark in connection with its Health and Wellness Services began subsequent to ConvaTec's adoption and use of its LIFE EMBRACE trademark and after ConvaTec filed its LIFE EMBRACE Applications.

7. Lifembraced had constructive knowledge of the LIFE EMBRACE mark before filing Application Serial No. 77/559,837. Upon information and belief, Lifembraced had actual knowledge of ConvaTec's distinctive LIFE EMBRACE trademark and its LIFE EMBRACE Applications before filing Application Serial No. 77/559,837.

8. ConvaTec did not authorize Lifembraced's adoption and use of the LIFEMBRACE trademark. On information and belief, Lifembraced intended to trade and capitalize on the goodwill generated by ConvaTec's LIFE EMBRACE trademark.

9. Lifembraced's LIFEMBRACE mark is confusingly similar in sight, sound, and commercial impression to ConvaTec's LIFE EMBRACE mark.

10. Lifembraced's LIFEMBRACE mark so closely resembles ConvaTec's LIFE EMBRACE mark that, if used in connection with the applied for goods, it would be likely to cause confusion, mistake or deception of the relevant trade and public under

Section 2(d) of the Trademark Act. Consumers will likely believe that Lifembraced's services are in some way associated with or connected with, or approved or authorized by, ConvaTec, or that Lifembraced's services otherwise originate from the same source as do ConvaTec's services, when this is not the case.

11. By reason of the foregoing, ConvaTec believes that it will be damaged by registration of Lifembraced's LIFEMBRACE mark in connection with the applied for goods.

WHEREFORE, ConvaTec prays that this Opposition be sustained and that Application Serial No. 77/559,837 be refused registration.

Respectfully submitted,

CONVATEC INC.

Dated: February 19, 2009

By: /s/ Thomas L. Holt
Thomas L. Holt
Michelle A. Miller
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
Telephone: (312) 321-4200
Facsimile: (312) 321-4299

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2009 I served a true and correct copy of the foregoing NOTICE OF OPPOSITION on counsel for Applicant by U.S. mail at the following address:

Ellen W. Stiefler
Stiefler Law Group, PC
3525 Del Mar Heights Rd #111
San Diego, CA 92130

/s/ Michelle A. Miller
One of the Attorneys for Opposer
ConvaTec, Inc.