

ESTTA Tracking number: **ESTTA395923**

Filing date: **03/02/2011**

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	The Republic of Tea, Inc.
Granted to Date of previous extension	03/02/2011
Address	#5 Hamilton Landing, Suite 100 Novato, CA 94949 UNITED STATES

Correspondence information	The Republic of Tea, Inc. #5 Hamilton Landing, Suite 100 Novato, CA 94949 UNITED STATES mweipdocket@mwe.com, umattsson@mwe.com, mburke@mwe.com, cvicino@mwe.com
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Applicant Information

Application No	85053975	Publication date	11/02/2010
Opposition Filing Date	03/02/2011	Opposition Period Ends	03/02/2011
Applicant	Pharmachem Laboratories, Inc. 265 Harrison Avenue Kearny, NJ 07032 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary supplemental drinks
Class 032. All goods and services in the class are opposed, namely: Energy drinks; Soft drinks; Soft drinks, namely, carbonated soft drinks, low calorie soft drinks, non-carbonated soft drinks; Sports drinks


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.	3320849	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET IT GOING		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3320853	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET CHARGED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		

U.S. Registration No.	3320856	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET CLEAN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3320852	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET GORGEOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		

U.S. Registration No.	3596054	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET GROWING		

Design Mark	GET GROWING
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

U.S. Registration No.	3596055	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET HAPPY		
Design Mark	GET HAPPY		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3596056	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET HEART		

Design Mark	GET HEART
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes


U.S. Registration No.	3320850	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET LOST		
Design Mark	get lost		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		


U.S. Registration No.	3596057	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET MATERNAL		

Design Mark	GET MATERNAL		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3596058	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET PASSIONATE		
Design Mark	GET PASSIONATE		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3320851	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET RELIEF		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes

U.S. Registration No.	3596059	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET RELAXED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes		

U.S. Registration No.	3596060	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET SMART		

Design Mark	GET SMART
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

U.S. Registration No.	3320855	Application Date	12/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	GET SOOTHED		
Design Mark	get soothed		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 Herb teas for medicinal purposes		

U.S. Registration No.	3596061	Application Date	12/13/2007
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	GET WELLNESS		

Design Mark	GET WELLNESS
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Herb teas for medicinal purposes

Attachments	78778363#TMSN.jpeg (1 page)(bytes) 78778403#TMSN.jpeg (1 page)(bytes) 78778428#TMSN.jpeg (1 page)(bytes) 78778397#TMSN.jpeg (1 page)(bytes) 77351631#TMSN.jpeg (1 page)(bytes) 77351642#TMSN.jpeg (1 page)(bytes) 77351647#TMSN.jpeg (1 page)(bytes) 78778369#TMSN.jpeg (1 page)(bytes) 77351649#TMSN.jpeg (1 page)(bytes) 77351653#TMSN.jpeg (1 page)(bytes) 78778392#TMSN.jpeg (1 page)(bytes) 77351655#TMSN.jpeg (1 page)(bytes) 77351656#TMSN.jpeg (1 page)(bytes) 78778412#TMSN.jpeg (1 page)(bytes) 77351658#TMSN.jpeg (1 page)(bytes) Notice of Opposition against GET IT ENERGIZED.pdf (7 pages)(1014063 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	/Ulrika E. Mattsson/
Name	The Republic of Tea, Inc.
Date	03/02/2011

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

In the matter of trademark application Serial No. 85/053,975
For the mark GET IT ENERGIZED
Published in the Official Gazette on November 2, 2010

The Republic of Tea, Inc.,

Opposer,

v.

Pharmachem Laboratories, Inc.,

Applicant.

NOTICE OF OPPOSITION

The Republic of Tea, Inc. is a California corporation, with its principal place of business at #5 Hamilton Landing, Suite 100, Novato, CA 94949 (“Opposer”); and through its counsel, McDermott Will & Emery LLP; 227 West Monroe Street; Chicago, Illinois 60606, hereby states that it will be damaged by registration of the mark GET IT ENERGIZED, covered by U.S. Application Serial Number 85/053,975, filed by Pharmachem Laboratories, Inc. (“Applicant”), and therefore files this Notice of Opposition to the application.

The grounds for this Opposition are as follows:

1. Pharmachem Laboratories, Inc. seeks to register GET IT ENERGIZED as a trademark for dietary supplemental drinks, in International Class 5 and for energy drinks; soft drinks; soft drinks, namely, carbonated soft drinks, low calorie soft drinks, non-carbonated soft drinks; sports drinks, in International Class 30.

2. Opposer owns a family of registrations starting with the word GET. In particular, Opposer owns a registration for the mark GET IT GOING, Reg. No. 3,320,849 for herbal teas for medicinal purposes, in International Class 5. Opposer also owns trademark registrations for GET

CHARGED, Reg. No. 3,320,853, GET CLEAN, Reg. No. 3,320,856, GET GORGEOUS, Reg. No. 3,320,852, GET GROWING, Reg. No. 3,596,054, GET HAPPY, Reg. No. 3,596,055, GET HEART, Reg. No. 3,596,056, GET LOST, Reg. No. 3,320,850, GET MATERNAL, Reg. No. 3,596,057, GET PASSIONATE, Reg. No. 3,596,058, GET RELIEF, Reg. No. 3,320,851, GET RELAXED, Reg. No. 3,596,059, GET SMART, Reg. No. 3,596,060, GET SOOTHED Reg. No. 3,320,855, and GET WELLNESS, Reg. No. 3,596,061, all for herb tea for medicinal purposes in International Class 5.

3. Applicant filed the application for GET IT ENERGIZED on June 3, 2010, and has not yet started using the mark in connection with the goods identified in the application.

4. Opposer has been using its GET IT GOING mark in interstate commerce in connection with its goods since at least as early as January 20, 2006, and filed its application for the mark on December 21, 2005. The registration issued on October 23, 2007. *See* exhibit 1.

5. Opposer's GET IT GOING mark is among the earliest members of Opposer's family of "GET" marks, all used in connection with herbal teas for medicinal purposes. Opposer has been developing its family of "GET" marks for herbal teas since 2005, filing seven applications for registration of the first members of its "GET" family on December 21, 2005. It began to sell its first products under "GET" marks as early as January 20, 2006. The application date, the date of first use, and the registration date of each member of its family of "GET" marks is as follows:

Application Date	Mark	Date of First Use	Registration Date
December 21, 2005	GET CHARGED	January 20, 2006	October 23, 2007
December 21, 2005	GET CLEAN	January 20, 2006	October 23, 2007
December 21, 2005	GET GORGEOUS	January 20, 2006	October 23, 2007
December 21, 2005	GET LOST	January 20, 2006	October 23, 2007
December 21, 2005	GET IT GOING	January 20, 2006	October 23, 2007
December 21, 2005	GET RELIEF	January 20, 2006	October 23, 2007
December 21, 2005	GET SOOTHED	January 20, 2006	October 23, 2007
December 13, 2007	GET GROWING	January, 2008	March 24, 2009
December 13, 2007	GET HAPPY	January, 2008	March 24, 2009

December 13, 2007	GET HEART	January, 2008	March 24, 2009
December 13, 2007	GET MATERNAL	January, 2008	March 24, 2009
December 13, 2007	GET PASSIONATE	January, 2008	March 24, 2009
December 13, 2007	GET RELAXED	January, 2008	March 24, 2009
December 13, 2007	GET SMART	January, 2008	March 24, 2009
December 13, 2007	GET WELLNESS	January, 2008	March 24, 2009
April 16, 2009	GET ACTIVE	N/A	N/A
April 16, 2009	GET CENTERED	N/A	N/A
April 16, 2009	GET FLEXIBLE	N/A	N/A
April 16, 2009	GET HYDRATED	N/A	N/A
April 16, 2009	GET IN TRAINING	N/A	N/A
April 16, 2009	GET RECOVERED	N/A	N/A

All of Opposer's marks were subject of trademark applications filed prior to the filing date of the subject application for Applicant's GET IT ENERGIZED mark. At least 15 of Opposer's marks were registered prior to the filing date of the GET IT ENERGIZED mark, and at least 15 of them were first used on goods in interstate commerce prior to Applicant's intent-to-use the GET IT ENERGIZED mark.

6. Opposer has expended substantial sums and resources to advertise and promote its goods under the GET IT GOING mark and under its family of "GET" marks.

7. By reason of Opposer's advertisement, promotion and sale of Opposer's goods under the GET marks for so many years, the GET marks have come to be recognized as identifying Opposer and the value of Opposer's goods throughout the United States, and Opposer has developed substantial goodwill in the GET marks.

8. Notwithstanding Opposer's prior use of and rights in and to GET IT GOING and other members of its family of "GET" marks, on June 3, 2010, Applicant filed U.S. Application Serial No. 85/053,975, for registration of the mark GET IT ENERGIZED for use in connection with dietary supplemental drinks, in International Class 5 and for energy drinks; soft drinks; soft drinks, namely, carbonated soft drinks, low calorie soft drinks, non-carbonated soft drinks; sports drinks, in

International Class 30. That application was published in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on November 2, 2010. Opposer obtained an extension of time to file this Notice of Opposition through March 2, 2011. Therefore, this Opposition is being timely filed.

9. Upon information and belief, Applicant has not yet started use of the GET IT ENERGIZED mark in connection with dietary supplemental drinks, in International Class 5 and in connection with energy drinks; soft drinks; soft drinks, namely, carbonated soft drinks, low calorie soft drinks, non-carbonated soft drinks; sports drinks, in International Class 30.

10. Opposer's marks are all registered for herb teas for medicinal purposes.

11. There is a definite relationship and overlap between the goods offered in connection with Applicant's GET IT ENERGIZED mark and the goods offered in connection with Opposer's GET IT GOING and family of "GET" marks. Applicant's mark is therefore likely to be confused with Opposer's marks.

12. Upon information and belief, the products identified in Applicant's application for the trademark GET IT ENERGIZED will be encountered by the same or similar class of purchasers as those who utilize or are familiar with the products offered by Opposer under its GET IT GOING mark and under its family of "GET" marks.

13. The applicant's GET IT ENERGIZED mark is confusingly similar to Opposer's GET IT GOING mark because the two first words in each mark are identical, and the marks as a whole have very similar meanings.

14. Applicant's GET IT ENERGIZED mark begins with the words "GET" and "IT" which are followed by an adverb that describes a "state of being" desirable to purchasers of drinks, i.e. "energized" conveys the meaning of "wake up" or "become recharged." Thus, Applicant's mark

delivers a message to consumers similar to the message delivered by Opposer's GET IT GOING mark which begins with the words "GET" and "IT" that are followed by an adverb that describe a desirable "state of being," i.e. "GOING." In addition, all members of Opposer's "GET" family of marks begin with the word "GET" and are followed by adverbs that describe a desirable "state of being." Applicant's mark delivers a message to consumers similar to the message delivered by Opposer's "GET" family of marks, and therefore, purchasers are likely to believe that Applicant's GET IT ENERGIZED "drink" products are extensions of Opposer's "GET" family of medicinal herb tea products.

15. Applicant's registration and use of the mark GET IT ENERGIZED interferes with Opposer's GET marks and will seriously damage Opposer and its goodwill and reputation.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and prays that it be denied.

Date: March 2, 2011

Respectfully submitted,
The Republic of Tea, Inc.

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EXHIBIT 1

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,320,849

Registered Oct. 23, 2007

TRADEMARK
PRINCIPAL REGISTER

get it going

THE REPUBLIC OF TEA, INC. (CALIFORNIA
CORPORATION)
8 DIGITAL DRIVE
NOVATO, CA 94949

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: HERB TEAS FOR MEDICINAL PURPOSES,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-778,363, FILED 12-21-2005.

FIRST USE 1-20-2006; IN COMMERCE 1-20-2006.

WENDY JUN, EXAMINING ATTORNEY