

ESTTA Tracking number: **ESTTA404632**

Filing date: **04/20/2011**

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	Lewis County Primary Care Center, Inc		
Entity	Corporation	Citizenship	Kentucky
Address	P.O. Box 550 Vanceburg, KY 41179 UNITED STATES		

Attorney information	Jack A. Wheat STITES & HARBISON PLLC 400 West Market Street Suite 1800 Louisville, KY 40202 UNITED STATES jwheat@stites.com Phone:(502) 587-3400
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Applicant Information

Application No	77938306	Publication date	04/12/2011
Opposition Filing Date	04/20/2011	Opposition Period Ends	05/12/2011
Applicant	The Cleveland Clinic Foundation 9500 Euclid Avenue Cleveland, OH 44114 UNITED STATES		


Goods/Services Affected by Opposition

<p>Class 041. First Use: 2009/05/12 First Use In Commerce: 2009/05/12 All goods and services in the class are opposed, namely: Training services in the fields of health, nutrition, wellness, work-life balance, stress management, financial planning, adoption, parenting, elder care, childcare, substance use, job performance and satisfaction, communication skills, team building skills, leadership development and management; providing educational workshops and seminars on health, nutrition, wellness, work-life balance, financial planning, stress management, adoption, parenting, eldercare, childcare, substance use, job performance and satisfaction, communication skills, team building, leadership development and management</p>
<p>Class 044. First Use: 2009/05/12 First Use In Commerce: 2009/05/12 All goods and services in the class are opposed, namely: Psychological counseling and consultation; counseling services in the fields of health, nutrition, and wellness, work-life balance; energy healing services, namely, stress management and stress reduction counseling for individuals to enhance their lives; providing information and consultation in the field of substance abuse and treatment centers</p>

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. Registration No.	3276666	Application Date	02/25/2005
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	LEAP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2005/00/00 First Use In Commerce: 2005/00/00 Medical testing services, namely fitness evaluations; health care services, namely health screening		

Attachments	78575304#TMSN.jpeg (1 page)(bytes) LewisCountyNoticeOfOpposition.pdf (4 pages)(115587 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	/jackawheat/
Name	Jack A. Wheat
Date	04/20/2011

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

In the matter of Application Serial No. 77/938,306
Filed: February 17, 2010
Mark: LEAP
Published in the *Official Gazette* on April 12, 2011.

LEWIS COUNTY PRIMARY CARE CENTER, INC.)	
doing business as PRIMARYPLUS)	
)	
Opposer,)	
)	OPPOSITION NO.
v.)	
)	
THE CLEVELAND CLINIC FOUNDATION,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Comes the Opposer, LEWIS COUNTY PRIMARY CARE CENTER, INC., (hereinafter “Lewis County” or “Opposer”), and for its Opposition to the pending application to register the mark LEAP prosecuted by THE CLEVELAND CLINIC FOUNDATION (hereinafter “Cleveland Clinic” or “Applicant”), Opposer submits the following:

1. Opposer, Lewis County Primary Care Center, Inc, is a Kentucky Corporation, with its principal place of business at 211 Ky 59, Vanceburg, Kentucky 41179.
2. Continuously since at least 2005, Lewis County has used the mark LEAP in commerce in association with health care services, including wellness and occupational medicine services such as physical examinations, health screening services, including evaluation

of blood work, biometrics, health and dietary consultations, substance abuse testing, treatment coordination and educational programs and materials relating to these services.

3. Lewis County is the owner of a registration of the mark LEAP issued by the United States Patent & Trademark Office for “Medical testing services, namely fitness evaluations; health care services, namely health screening,” namely registration number 3,276,666 issued on August 7, 2007 based upon a first use dating back until at least 2005.

4. On February 17, 2010, Cleveland Clinic filed an application to register the word mark LEAP for use in connection with, among other things, “training services in the fields of health, nutrition, wellness, work-life balance, stress management . . . substance abuse” and “providing educational workshops and seminars on health, nutrition, wellness, work-life balance . . . substance abuse, job performance and satisfaction” in International Class 041, and “for psychological counseling and consultation: counseling services in the fields of health, nutrition, and wellness, work-life balance; energy healing services, namely stress management and stress reduction counseling for individuals to enhance their lives; providing information and consultation in the field of substance abuse and treatment centers” in International Class 044. That application was published in the *Official Gazette* on April 12, 2011.

5. The continued use by Lewis County of the mark LEAP, as well as the February 25, 2005 filing priority date of the application which matured into its registration of the mark predate the first use dates claimed by Applicant as well as the filing date of the opposed application, thus, Opposer has priority of use.

6. The mark sought to be registered is so similar to Opposer’s mark as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)), all to Opposer’s irreparable damage.

7. Accordingly, Opposer believes that it will be damaged by registration of the mark sought to be registered in that, if registration issues, (a) consumers are likely to purchase Applicant's services believing them to be the Opposer's services, or to be sponsored by or associated with Opposer; (b) any defects in Applicant's services may be attributed to the Opposer; and (c) registration of mark will give Applicant the presumptive right to use the mark with its services. All of these effects of registration will cause injury to Opposer.

WHEREFORE, Opposer prays that the registration sought in Application Serial No. 77/938,306 be denied in International Class 041, or alternatively be refused at least in relation to "training services in the fields of health, nutrition, wellness, work-life balance, stress management . . . substance abuse" and "providing educational workshops and seminars on health, nutrition, wellness, work-life balance . . . substance abuse, job performance and satisfaction" and also that the registration sought be denied in International Classes 044.

/jackawheat/
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Attorneys for Opposer

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Counsel for the Applicant by mailing said copy on this 20th day of April, 2011, via First Class Mail, postage prepaid to:

Colleen F. Goss
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/jackawheat/
Jack A. Wheat,
One of Attorneys for Opposer

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