

ESTTA Tracking number: **ESTTA405545**

Filing date: **04/25/2011**

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	Klamath Algae Products, Inc.
Granted to Date of previous extension	04/30/2011
Address	610 Broad Street Klamath Falls, OR 97601 UNITED STATES
Correspondence information	Evan Anderson, Esq. Attorney of record Patel & Alunit, P.C. 16830 Ventura Blvd Suite 360 Encino, CA 91436 UNITED STATES evan@patelalunit.com Phone:(818) 380-1900

Applicant Information

Application No	85123224	Publication date	03/01/2011
Opposition Filing Date	04/25/2011	Opposition Period Ends	04/30/2011
Applicant	G.A.L.E., Inc. 2217 Mulberry Ln Placerville, CA 95667 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 2005/10/26 First Use In Commerce: 2005/10/26 All goods and services in the class are opposed, namely: Horse feed


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.	3549801	Application Date	05/05/2008
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	E3LIVE		

Design Mark	<h1>E3LIVE</h1>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/10/01 First Use In Commerce: 1999/10/01 Fresh frozen Aphanizomenon flos-aquae (blue green algae) for use as a dietary supplement		

U.S. Registration No.	2516939	Application Date	08/31/2000
Registration Date	12/11/2001	Foreign Priority Date	NONE
Word Mark	E3LIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1999/10/01 First Use In Commerce: 1999/10/01 FRESH FROZEN APHANIZOMENON FLDS-AQUAE (BLUE GREEN ALGAE)		

Attachments	77466350#TMSN.jpeg (1 page)(bytes) 76120089#TMSN.gif (1 page)(bytes) Ty_0425155755_001.pdf (5 pages)(114767 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	/evananderson/
Name	Evan Anderson, Esq.

Date	04/25/2011
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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_____)	
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)	
KLAMATH ALGAE PRODUCTS, INC.,)	
)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Ser. No. 85/123,224
)	
G.A.L.E., Inc.,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Klamath Algae Products, Inc., an Oregon corporation, whose principal place of business is located at 610 Broad Street, Klamath Falls, OR 97601, hereby opposes the registration of trademark application serial number 85/123,224 (E3 LIVE FOR HORSES), filed on September 3, 2010, and owned by G.A.L.E., Inc., a Nevada Corporation, whose principal place of business is located at 2217 Mulberry Lane, Placerville, CA 95667.

As grounds in support for its Notice of Opposition, Opposer asserts as follows:

COUNT ONE

Likelihood of Confusion

1. Opposer is the owner of U.S. Trademark Reg. No. 3,549,801 for the trademark E3LIVE used in connection with Fresh frozen Aphanizomenon flos-aquae (blue green

algae) for use as a dietary supplement. Opposer's effective priority first use date was October 1, 1999.

2. Opposer is the owner of U.S. Trademark Reg. No. 2,516,939 for the trademark E3LIVE and Design used in connection with FRESH FROZEN APHANIZOMENON FLDS-AQUAE (BLUE GREEN ALGAE). Opposer's effective priority first use date was October 1, 1999.
3. Applicant is the owner of U.S. Ser. No. 85/123,224 for the trademark E3 LIVE FOR HORSES used in connection with horse feed. Applicant's filing date is September 3, 2010 and its first use in commerce date is October 26, 2005.
4. Applicant's Mark (E3 LIVE FOR HORSES) is identical or nearly identical to the Opposer's Marks cited above (E3LIVE, E3LIVE and Design). It is indisputable that the dominant feature of the respective marks is the E3LIVE wording.
5. Applicant's Goods are also nearly identical to those offered by Opposer under its E3LIVE marks. In fact, Applicant's Goods directly compete with Opposer's. Consequently, Applicant's Goods are highly related to Opposer's Goods associated with the E3LIVE marks and flow in the same or related channels of trade.
6. Applicant's continued use of the E3 LIVE FOR HORSES trademark will likely cause confusion among the relevant consuming public and will likely cause the relevant consuming public to mistakenly conclude that Applicant's Goods are associated with Opposer, when in fact they are not.
7. Applicant's continued use of the E3 LIVE FOR HORSES trademark is likely to cause injury E3LIVE trademarks by causing confusion, mistake, and/or deception as to the respective rights of the parties as to the source or sponsorship of such goods.

8. There is a dispute as to priority. Applicant's filing date is September 3, 2010 and its first use in commerce date is October 26, 2005. Opposer has an effective filing date of May 5, 2008 for the E3LIVE mark and a first use date of October 1, 1999. Opposer has an effective filing date of August 31, 2000 for the E3LIVE and Design mark and a first use date of October 1, 1999. By 2005, Opposer had already established a customer base in connection with the E3LIVE marks and those Goods offered in connection with its various E3LIVE marks. Therefore, Opposer has earlier common law rights in the E3LIVE marks, and any similarly confusing variations of Opposer's Marks.
9. Through extensive use, advertising, marketing and promotion of Opposer's Marks, Opposer has built up, at great expense and effort, a valuable reputation and goodwill symbolized by its strong and distinctive marks.

COUNT 2

False Suggestion of Connection

10. Applicant's E3LIVE trademarks is identical and nearly identical to Opposer's E3 LIVE FOR HORSES trademark. It falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's mark points uniquely to Opposer, and purchasers will assume that the Goods offered under Applicant's trademark are connected with Opposer.
11. Opposer will be damaged by the use and registration of Applicant's trademark as it will deprive Opposer of the ability to protect his reputation, persona and goodwill.

12. Opposer will be damaged by the registration of Applicant's trademark as it will narrow the scope of trademark protection accorded to Opposer's E3LIVE trademarks, such that others may use the term E3LIVE in the food and nutrition area.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration of Trademark Ser. No. 85/123,224 be refused.

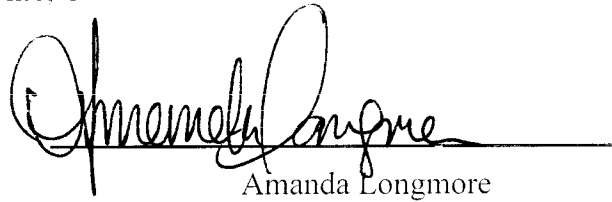
Dated: April 25, 2011

By /evananderson/
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Attorneys for Opposer
Klamath Algae Products, Inc.

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S NOTICE OF OPPOSITION** has been served on Applicant on Wayne Blevins, President of Applicant, on April 25, 2011, via First Class U.S. Mail, postage prepaid to:

Wayne Blevins
G.A.L.E. Inc.
2217 Mulberry Lane
Placerville, CA 95667


Amanda Longmore