

ESTTA Tracking number: **ESTTA422881**

Filing date: **08/02/2011**

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	TrevorTaylor
Granted to Date of previous extension	08/03/2011
Address	7301 SW 57 COURT STE 515 South Miami, FL 33143 UNITED STATES

Attorney information	David K. FRIEDLAND FRIEDLAND VINING PA 7301 SW 57 COURT STE 515 South Miami, FL 33143 UNITED STATES david.friedland@friedlandvining.com, jaime.vining@friedlandvining.com
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Applicant Information

Application No	85179248	Publication date	04/05/2011
Opposition Filing Date	08/02/2011	Opposition Period Ends	08/03/2011
Applicant	Health Science Distributors, Co. 825 C. Merrimon Avenue, #181 Asheville, NC 28804 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1995/00/00 First Use In Commerce: 1995/00/00 All goods and services in the class are opposed, namely: Pharmaceutical preparation for the treatment of hormonal disorders and the prevention of osteoporosis; natural progesterone cream

Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant did not continuously and substantially exclusively use the Mark in commerce prior to July 15, 2010; Registration of the Mark is barred because Applicant lacks priority of use of the Mark as a result of its non-use; Registration of the Mark is barred because Applicant is not (and was not, at the time of the filing of its Application for registration) the rightful owner of the Mark

Attachments	Notice of Opposition (Taylor v. Health Science).pdf (7 pages)(279867 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 Overnight Courier on this date.

Signature	/David K. Friedland/
Name	David K. FRIEDLAND
Date	08/02/2011

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

Trevor Taylor, an individual,
Opposer,

v.

Health Science Distributors, Co., a Florida corporation,
Applicant.

Opposition No.: _____
Application Serial No: 85/179,248

Date of Publication: April 5, 2011
Mark: SERENITY

NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063(a) and TBMP § 303.01, Opposer, Trevor Taylor (“Opposer”), an individual residing in the United Kingdom, believes that he is or will be damaged by Application Serial No. 85/179,248 (the “Application”), and hereby opposes the registration of same.

As grounds for opposition, it is alleged that:

1. According to the Trademark Electronic Search System (“TESS”) of the United States Patent and Trademark Office (“PTO”), Applicant, Health Science Distributors, Co., a corporation organized and existing under the laws of the State of Florida, with a principal address of 825 C. Merrimon Avenue, #181, Asheville, North Carolina 28804, is the record owner of the Application.

2. The Application was filed on November 17, 2010 for the mark **SERENITY** (the “Mark”). Applicant seeks registration of the Mark on the Principal Register in respect of “pharmaceutical preparation for the treatment of hormonal disorders and the prevention of osteoporosis; natural progesterone cream” in International Class 5, and claims a date of first use in commerce as of 1995.

3. Opposer believes that he will be damaged by registration of the Mark as shown in the Application, in that Applicant has alleged, and Opposer denies, that Opposer's use of the term "serenity" constitutes trademark infringement, false designation of origin, sponsorship and/or affiliation and unfair competition of its **SERENITY** mark in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

4. Registration of the Mark further injures Opposer by impairing Opposer's ability to register trademarks related to progesterone cream products.

5. According to the records of Florida Department of State, Division of Corporations, Applicant's corporate entity was formed on July 15, 2010. See Exhibit A.

6. Upon information and belief, Applicant did not continuously and substantially exclusively use the Mark in commerce prior to July 15, 2010.

7. Upon information and belief, registration of the Mark is barred because Applicant is not (and was not, at the time of the filing of its Application for registration) the rightful owner of the Mark.

8. Upon information and belief, registration of the Mark is barred because Applicant lacks priority of use of the Mark as a result of its non-use because Opposer made intervening use of the term "serenity" prior to July 15, 2010 such that Applicant cannot preclude Opposer's use.

9. Upon information and belief, this opposition should be sustained based on Applicant's loss of its priority date.

10. Upon information and belief, registration of the Mark is also barred because Applicant committed fraud during the prosecution of its Application for

registration when it knowingly and falsely alleged use in commerce of the Mark as of 1995.

11. As a result of Applicant's fraudulent conduct, Applicant's Application is void *ab initio* and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that Application Serial No. 85/179,248 be denied registration in respect of "pharmaceutical preparation for the treatment of hormonal disorders and the prevention of osteoporosis; natural progesterone cream."

Date: August 2, 2011

Respectfully submitted,

FRIEDLAND VINING, P.A.

/Jaime Rich Vining/

David K. Friedland
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*Attorneys for Opposer
Trevor Taylor*

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **NOTICE OF OPPOSITION** was served upon Applicant by delivering true and correct copies of same to Applicant and its counsel via Federal Express on August 2, 2011 as follows:

Health Science Distributors, Co.
825 C. Merrimon Ave. #181
Asheville, North Carolina 28804

Bridget H. Labutta, Esq.
Allen, Dyer, Doppelt, Mibrath & Gilchrist
255 S. Orange Ave., Suite 1401
Orlando, Florida 32801-3460

/Jaime Rich Vining/
Jaime Rich Vining

EXHIBIT A

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Florida Profit Corporation

HEALTH SCIENCE DISTRIBUTORS, CO.

Filing Information

Document Number P10000058413
FEI/EIN Number 273244442
Date Filed 07/15/2010
State FL
Status ACTIVE
Effective Date 07/10/2010

Principal Address

825 C MERRIMON AVE
 181
 ASHEVILLE NC 28804

Mailing Address

1982 STATE RD. 44, STE. 172
 NEW SMYRNA BEACH FL 32168

Changed 01/27/2011

Registered Agent Name & Address

BEHIND THE SCENES FINANCIAL SERVICES LLC
 6159 SEQUOIA DRIVE
 PORT ORANGE FL 32127 US

Officer/Director Detail

Name & Address

Title P
 MELVILLE, I.
 825 C MERRIMON AVE, 181
 ASHEVILLE NC 28804

Title SEC
 GRAVES, J
 1982 STATE ROAD 44, #172
 NEW SMYRNA BEACH FL 32168

Title VP

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