

ESTTA Tracking number: **ESTTA593874**

Filing date: **03/21/2014**

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	ConSeal International, Inc.
Granted to Date of previous extension	03/22/2014
Address	90 Kerry Place Suite 2 Norwood, MA 02062 UNITED STATES

Attorney information	Joshua D. Martin Johnson & Martin, P.A. 500 W. Cypress Creek Road Suite 430 Fort Lauderdale, FL 33309 UNITED STATES trademarks@johnsonmartinlaw.com, josh.martin@johnsonmartinlaw.com,
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Applicant Information

Application No	86051702	Publication date	01/21/2014
Opposition Filing Date	03/21/2014	Opposition Period Ends	03/22/2014
Applicant	Biosensory, Inc. 107 Providence St Putnam, CT 06260 GERMANY		

Goods/Services Affected by Opposition

Class 005. First Use: 2000/05/30 First Use In Commerce: 2000/05/30 All goods and services in the class are opposed, namely: Insect inhibitor in candle form
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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.	3371348	Application Date	10/03/2006
Registration Date	01/22/2008	Foreign Priority Date	NONE
Word Mark	CONSEAL		

Design Mark	<h1>CONSEAL</h1>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1977/06/05 First Use In Commerce: 1977/06/05 Research and development and consultation related thereto in the fields of chemistry; research and development of chemical compositions used in chemical and nutritional supplement products for custommanufacturing and private labeling; scientific and technical consulting and research services relating to chemicals anddietary supplements		

U.S. Registration No.	3433690	Application Date	06/14/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE

Word Mark	CONSEAL		
Design Mark	<h1>CONSEAL</h1>		
Description of Mark	NONE		
Goods/Services	Class 017. First use: First Use: 1984/12/31 First Use In Commerce: 1984/12/31 WATER-BASED SEALANTS FOR USE IN CONCRETE AND MASONRY APPLICATIONS SUCH AS MANHOLES, CONCRETE VAULTS, SEPTIC TANKS, CONCRETE PIPE, BOX CULVERTS, UTILITY VAULTS,BURIAL VAULTS, VERTICAL PANEL STRUCTURES, WALLS, FLOORS, BRIDGES, DECKS, AND DOCKS		

Attachments	77012510#TMSN.jpeg(bytes) 76661566#TMSN.gif(bytes) 57997-0094 Notice of Opposition - Complaint v2.pdf(41528 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	/Joshua D. Martin/
Name	Joshua D. Martin
Date	03/21/2014

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

In Re Serial No. 86/051,702)	
Filed August 29, 2013)	
Mark: CONCEAL)	
)	
Published in the <i>Official Gazette</i>)	
On January 21, 2014)	
)	
CONSEAL INTERNATIONAL)	Opposition No.
INCORPORATED,)	
)	
Opposer,)	
)	
v.)	
)	
BIOSENSORY, INC.)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

ConSeal International Incorporated (“Opposer”), a corporation organized under the laws of Florida and with its principal place of business at 90 Kerry Place, Suite 2, Norwood, Massachusetts 02062, believes it will be damaged by registration of U.S. Trademark Application Serial No. 86/051,702 for CONCEAL covering “insect inhibitor in candle form” in International Class 5, and hereby opposes the same under the provisions of 15 U.S.C. § 1063.

As grounds for opposition, Opposer asserts that:

1. Opposer is a manufacturer of a wide range of custom and proprietary products and has expertise in formulating and manufacturing specialty products in many industries.
2. Opposer is the owner of United States Trademark Registration Nos. 3,371,348 (“the ‘348 Registration”) and 3,433,690 (“the ‘690 Registration”) for the mark “CONSEAL.”

3. Since at least as early as June 5, 1977, Opposer has continuously used the CONSEAL mark in interstate commerce in the United States in connection with a variety of goods and/or services. Specifically, Opposer has sold and/or provided the following goods and/or services, among other things: insecticides, pesticides, water-based sealants for use in concrete and masonry applications, nutritional and dietary supplements, fuel additive products, and research and development in the fields of chemistry. Opposer uses the CONSEAL mark on and/or in connection with all of its good and/or services.

4. Opposer has developed significant goodwill in its CONSEAL mark, which represents Opposer's commitment to providing high quality products.

5. As a result of the substantial use and promotion of Opposer's CONSEAL mark on and in connection with its various products and/or services, the consuming public has come to know, rely upon, and recognize Opposer's goods and/or services by that mark.

6. Opposer's CONSEAL mark is inherently distinctive.

7. As a result of its long-standing use of and investment in the CONSEAL mark, Opposer has acquired significant common law rights in and to its CONSEAL mark.

8. Applicant filed Application Serial No. 86/051,702 on August 29, 2013 for the mark CONCEAL ("Applicant's Mark") for "insect inhibitor" in International Class 5 ("Applicant's Goods"). This application was published for opposition on January 21, 2014. Opposer has been granted an extension of time to oppose through March 22, 2014.

9. There is no issue as to priority. Applicant filed its application on August 29, 2013 claiming use in commerce as of May 30, 2000. In contrast, Opposer has continually used the CONSEAL mark in commerce since at least June 5, 1977.

10. Opposer is not connected in any way with the Applicant or Applicant's use of Applicant's Mark.

11. Opposer has not given Applicant permission to use or register Applicant's Mark.

12. Applicant's Mark is virtually identical to Opposer's CONSEAL mark.

13. Applicant's unauthorized use of Applicant's Mark is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers of the parties, as to some affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship or approval of Applicant's Goods. As such, registration should be refused under 15 U.S.C. § 1052(d).

14. Registration of Applicant's Mark would be a source of damage to Opposer because purchasers are likely to attribute the source of sponsorship of Applicant's Goods to Opposer.

15. Registration of Applicant's Mark would be a source of damage to Opposer, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer's long prior use of its CONSEAL mark.

WHEREFORE, Opposer requests that Application Serial No. 86/051,702 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Director is authorized to charge the required fee to the credit card submitted by Opposer.

Dated: March 21, 2014

Respectfully submitted,

/Joshua D. Martin/
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ATTORNEYS FOR OPPOSER,
ConSeal International Incorporated

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Opposition has been served via First Class Mail to Applicant's attorney of record at the address below on the 21st day of March, 2014:

David R. Josephs
BARLOW, JOSEPHS & HOLMES, LTD.
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Providence, Rhode Island 02903
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/Joshua D. Martin/
Joshua D. Martin, Esq.