

ESTTA Tracking number: **ESTTA760975**

Filing date: **07/27/2016**

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	ChromaDex Inc.
Granted to Date of previous extension	07/27/2016
Address	10005 Muirlands Suite G Irvine, CA 92618 UNITED STATES

Attorney information	Joseph T. Nabor Fitch, Even, Tabin & Flannery, LLP 120 S. LaSalle Street Suite 1600 Chicago, IL 60603-3406 UNITED STATES trademark@fitcheven.com Phone:312-577-7000
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Applicant Information

Application No	86612621	Publication date	03/29/2016
Opposition Filing Date	07/27/2016	Opposition Period Ends	07/27/2016
Applicant	ProSupps USA LLC 601 Century Parkway, Suite 300 Allen, TX 75013 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2013/06/00 First Use In Commerce: 2013/06/00 All goods and services in the class are opposed, namely: Dietary and nutritional supplements featuring pterostilbene
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	BAD FAITH

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3932510	Application Date	02/19/2010
Registration Date	03/15/2011	Foreign Priority Date	NONE
Word Mark	PTEROPURE		

Design Mark	<h1>pTeroPure</h1>		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2010/03/11 First Use In Commerce: 2010/03/11 Phytochemicals for use in the manufacturing of dietary supplements and nutritional products		

U.S. Registration No.	4459837	Application Date	07/24/2012
Registration Date	12/31/2013	Foreign Priority Date	NONE
Word Mark	PROC3G		
Design Mark	<h1>ProC3G</h1>		
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2012/03/00 First Use In Commerce: 2012/03/00 Phytochemicals containing cyanidin-3-glucoside for use in the manufacturing of dietary supplements, nutritional products, pharmaceuticals and cosmetics		

Attachments	77939875#TMSN.png(bytes) 85685195#TMSN.png(bytes) 139334 ChromaDex v. ProSupps USA.pdf(270606 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	/Joseph T. Nabor/
Name	Joseph T. Nabor
Date	07/27/2016

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

ChromaDex Inc.)		
	Opposer,)		
v.)		
ProSupps USA LLC)	} Opposition No.	
	Applicant.)		
<hr style="width: 35%; margin-left: 0;"/>)		
Serial No.	86612621)		
Filed:	April 28, 2015)		
Mark:	PTERO PRO)		
Published:	April 28, 2015)		
)		

NOTICE OF OPPOSITION

ChromaDex Inc., a California corporation, having a principal place of business at 10005 Muirlands, Suite G, Irvine, CA 92618 (hereinafter referred to as “ChromaDex”) believes that it will be damaged by the registration of the PTERO PRO mark in Application No. 86612621 filed by ProSupps USA LLC identified as a Texas Limited Liability Company with an address of 601 Century Parkway, Suite 300, Allen, Texas 75013 (hereinafter referred to as “Applicant”) and hereby oppose the same upon the following grounds:

COUNT 1: LIKELIHOOD OF CONFUSION

1. ChromaDex is the owner of the pTeroPure trademark in connection with phytochemicals products based on its use beginning at least as early as 2010, long before the Applicant can make any claim to its PTERO PRO mark.
2. On March 15, 2011, the United States Patent & Trademark Office registered on the Principal Register and issued Registration No. 3932510 for the mark pTeroPure for use on “phytochemicals for use in the manufacturing of dietary supplements and nutritional products” in International Class 1. Said Registration is presently valid and subsisting and is now owned by ChromaDex and is *prima facie* evidence of ChromaDex's exclusive right to use said mark in commerce on the goods. A current printout of information from the USPTO electronic database records showing the current status and title of Registration No. 3932510 appears in Exhibit A.

3. ChromaDex is the owner of the ProC3G trademark in connection with phytochemicals products based on its use beginning at least as early as 2012, before the Applicant can make any claim to its PTERO PRO mark.

4. On December 31, 2013 the United States Patent & Trademark Office registered on the Principal Register and issued Registration No. 4459837 for the mark PROC3G for use on “phytochemicals containing cyaniding-3 glucoside for use in the manufacturing of dietary supplements, nutritional products, pharmaceuticals and cosmetics” in International Class 1. Said Registration is presently valid and subsisting and is now owned by ChromaDex and is *prima facie* evidence of ChromaDex's exclusive right to use said mark in commerce on the goods. A current printout of information from the USPTO electronic database records showing the current status and title of Registration No. 4459837 appears in Exhibit B.

5. ChromaDex has enjoyed continuous and substantial sales of goods in connection with the pTeroPure and ProC3G Marks beginning long before Applicant can claim any priority in its mark.

6. In its Application No. 86612621, Applicant seeks registration on the Principal Register for the PTERO PRO mark in connection with “dietary and nutritional supplements featuring pterostilbene” in International Class 5.

7. Upon information and belief, Applicant cannot claim priority in the United States for its PTERO PRO Mark earlier than June 2013, the date claimed as first use in Application No. 86612621.

8. By reason of longstanding and extensive marketing, advertising and promotion of the goods in connection with the pTeroPure and ProC3G Marks, and the high quality of those goods, the pTeroPure and ProC3G Marks have developed extremely valuable goodwill, are famous and have had a reputation associated and identified with ChromaDex long before the Applicant can assert any claim in the Applicant's PTERO PRO Mark.

9. On information and belief, Applicant's adoption and use of the Applicant's PTERO PRO Mark has been with actual or constructive knowledge of the prior use of, application for, and registration of the pTeroPure and ProC3G Marks.
10. Applicant's adoption and use of the Applicant's PTERO PRO Mark has been without the consent or permission of the Opposer.
11. The goods specified in the Applicant's trademark application for the Applicant's PTERO PURE Mark are similar to the goods in registrations for the pTeroPure and ProC3G Marks and provided under the pTeroPure and ProC3G Marks in current use.
12. On information and belief, the Applicant's PTERO PRO Mark in connection with the specified goods are promoted in the same channels of trade, to the same potential purchasers, and use the same advertising media and channels as those in connection with the pTeroPure and ProC3G Marks.
13. The Applicant's PTERO PRO Mark is confusingly similar to the pTeroPure and ProC3G Marks.
14. If Applicant is granted registration of its PTERO PRO Mark as set forth in Application No. 86612621, Applicant will thereby obtain the *prima facie* exclusive right to use such mark, and such registration will damage, impair, diminish, and dilute ChromaDex's goodwill and rights in its pTeroPure and ProC3G Marks causing irreparable injury to the Opposer.
15. Applicant's PTERO PRO Mark is likely to cause confusion, mistake, or deception that Applicant's goods are those of ChromaDex or are otherwise endorsed, sponsored, or approved by ChromaDex, resulting in damage to the Opposer.

COUNT II: BAD FAITH

16. The Opposer realleges and incorporates herein the allegations of paragraph nos. 1-15, inclusive.

17. The Applicant had prior knowledge of Opposer's pTeroPure and ProC3G Marks.
18. Applicant contacted Opposer to obtain information about Opposer's brands.
19. Applicant filed its PTERO PRO application near the time Applicant obtained information about Opposer's brands.
20. If Applicant is granted registration of its PTERO PRO Mark as set forth in Application No. 86612621, Applicant will thereby obtain the prima facie exclusive right to use such mark, and such registration will damage, impair, tarnish, diminish, and dilute the distinctive quality of the pTeroPure and ProC3G Marks causing irreparable injury to the Opposer.

PRAYER FOR RELIEF

WHEREFORE, the Opposer ChromaDex, respectfully request that Application No. 86612621 be rejected; and, that registration of the Applicant's PTERO PRO Mark be refused.

Respectfully submitted,

July 27, 2016



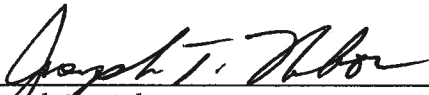
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Telephone: 312.577.7000/Facsimile: 312.577.7007
Attorney for Opposers

CERTIFICATE OF SERVICE

I, Joseph T. Nabor, Attorney for Opposer, hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid, upon:

*Michael W. Dubner
Gardere Wynne Sewell
1601 E., St Ste 3000
Dallas, Texas 75201-4761*

on this 27th day of July, 2016.



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Attorney for Opposer

742299

Exhibit A



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pTeroPure

Word Mark PTEROPURE
Goods and Services IC 001. US 001 005 006 010 026 046. G & S: Phytochemicals for use in the manufacturing of dietary supplements and nutritional products. FIRST USE: 20100311. FIRST USE IN COMMERCE: 20100311
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77939875
Filing Date February 19, 2010
Current Basis 1A
Original Filing Basis 1B
Published for Opposition July 27, 2010
Registration Number 3932510
Registration Date March 15, 2011
Owner (REGISTRANT) ChromaDex Inc. CORPORATION CALIFORNIA 10005 Muirlands Suite G Irvine CALIFORNIA 92618
Attorney of Record JOSEPH T. NABOR
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Exhibit B



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ProC3G

Word Mark PROC3G
Goods and Services IC 001. US 001 005 006 010 026 046. G & S: Phytochemicals containing cyanidin-3-glucoside for use in the manufacturing of dietary supplements, nutritional products, pharmaceuticals and cosmetics. FIRST USE: 20120300. FIRST USE IN COMMERCE: 20120300
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85685195
Filing Date July 24, 2012
Current Basis 1A
Original Filing Basis 1B
Published for Opposition February 5, 2013
Registration Number 4459837
Registration Date December 31, 2013
Owner (REGISTRANT) ChromaDex Inc. CORPORATION CALIFORNIA 10005 Muirlands, Suite G Irvine CALIFORNIA 92618
Attorney of Record Joseph T. Nabor
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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