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

Proceeding	91233513
Party	Plaintiff Be Well Health & Wellness LLC
Correspondence Address	J. Noah Hagey BraunHagey & Borden LLP 220 Sansome Street2nd Floor San Francisco, CA 94104-2711 UNITED STATES tadmin@braunhagey.com, shadow@braunhagey.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	J. Noah Hagey
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Signature	/jnhagey/
Date	05/15/2017
Attachments	StipMotAmendNotOpp-91233513-BE WELL BY KELLY.pdf(78631 bytes) BE WELL BY KELLY_Amended Notice of Opposition.pdf(485122 bytes)

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

Be Well Health & Wellness, LLC,

Opposer,

v.

Kelly LeVeque, an Individual,

Applicant.

Opposition No. 91233513

In re U.S. Application Serial No. 87064690

For the mark: BE WELL BY KELLY

STIPULATED MOTION TO AMEND NOTICE OF OPPOSITION

Pursuant to TBMP section 507.01, Opposer, Be Well Health & Wellness, LLC, by and through its attorney, moves to file the attached Amended Notice of Opposition. The amended submission merely corrects a clerical error in the original filing. All information and Opposer's counsel's signature were properly included when Opposer filed the Opposition via ESTTA.

By and through its counsel of record, Applicant consents to this motion. Applicant's existing Answers and Affirmative Defenses will remain in effect as only clerical errors are being corrected with the Amended Notice of Opposition.

Dated: May 15, 2017

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By: /inhagey/

J. Noah Hagey

Attorney for Opposer

220 Sansome Street, 2nd Floor
San Francisco, California 94104-2711
Telephone: 415-599-0210
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Email: tmadmin@braunhagey.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **STIPULATED MOTION TO AMEND NOTICE OF OPPOSITION** has been served on May 15, 2017 by email upon:

Michael Martin
Fischbach Perlstein Lieberman & Almond
1925 Century Park East, Suite 2050
Los Angeles, California 90067
mmartin@fpllaw.com

Attorney for Applicant

/jnhagey/
J. Noah Hagey

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

BE WELL HEALTH & WELLNESS, LLC,
a Delaware limited liability company,

Opposer,

v.

Kelly LeVeque, an individual,

Applicant.

AMENDED NOTICE OF OPPOSITION

Re: Mark: BE WELL BY KELLY
Serial No.: 87/064690
Filed: June 8, 2016
Published: November 22, 2016

Opposer Be Well Health & Wellness, LLC, (“Opposer”) a Delaware limited liability company with a principal place of business at 3 Columbus Circle, Suite 1420, New York, NY 10019, believes it will be damaged by the registration of the mark shown in Application Serial No. 87/064690 (the “Application”) and hereby opposes the Application.

As grounds for the opposition, Opposer alleges that:

1. On information and belief, the Application was filed by Applicant Kelly LeVeque (“Applicant”), an individual residing at 1925 Century Park East, Suite 2050 Los Angeles, CA 90067.
2. Opposer is a leading health and wellness online provider of nutritional and health counseling and consulting services and related health and wellness products including smoothie and shake recipes, shakes, nutritional drinks, supplements, cleanses, and vitamins. Opposer has used the marks BE WELL® and BE WELL BY DR. FRANK LIPMAN® in connection with

health and wellness nutrition and health counseling services since at least as early as 2008. Such use has been valid and continuous, and such marks have not been abandoned.

3. Opposer owns multiple federal applications and registrations (the “BE WELL Registrations”) for marks incorporating BE WELL® (the “BE WELL Marks”), with priority dates earlier than the June 8, 2016 filing date of Applicant’s Application, and earlier than Applicant’s claimed first use date of May 21, 2013. These BE WELL Marks include without limitation the following:

a. Reg. No. 3781744 for BE WELL® in connection with “social networking services featuring the participant’s health information, questions and experiences” in International Class 45, with a filing date of March 10, 2008, a registration date of April 27, 2010, and claiming a first use date at least as early as April 2008.

b. Reg. No. 4476692 for BE WELL BY DR. FRANK LIPMAN® in connection with “providing a website featuring content regarding healthy living and lifestyle wellness”, in International Class 44, with a filing date of May 26, 2011, a registration date of February 4, 2014, and claiming a first use date at least as early as May 25, 2011.

c. Reg. No. 4476691 for BE WELL BY DR. FRANK LIPMAN® in connection with “online retail store services featuring dietary supplements”, in International Class 35, with a filing date of May 26, 2011, a registration date of February 4, 2014, and claiming a first use date at least as early as May 25, 2011.

d. Reg. No. 4207152 for BE WELL BY DR. FRANK LIPMAN® in connection with “dietary supplements”, in International Class 05, with a filing date of May 24, 2011, a registration date of September 11, 2012, and claiming a first use date at least as early as May 25, 2011.

e. Application Ser. No. 87234709 for BE WELL filed on November 11, 2016, and claiming a first use date at least as early as April 2008, in connection with:

Dietary supplement drink mixes; Dietary supplemental drinks; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Dietary supplements; Nutritional supplement shakes; Nutritional supplements; Powdered nutritional supplement drink mix; Powdered nutritional supplement drink mix and concentrate, in International Class 05;

Shakes, in International Class 46;

Computerized on-line retail store services in the field of health and wellness products; On-line retail store services featuring nutritional and dietary supplements, in International Class 29;

Consulting services in the field of health; Consulting services in the field of women's health; Consulting services in the fields of health and nutrition; Health assessment services; Health care services, namely, wellness programs; Health counseling; Holistic health services; Providing health information; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information concerning alternative health and healing; Wellness and health-related consulting services; Consulting in the field of health and wellness to bring about personal happiness; Counseling services in the fields of health, nutrition and lifestyle wellness; Internet-based health care information services; Providing a web site featuring information on health and nutrition; Providing information in the fields of health and wellness, in International Class 44.

4. Opposer sells and offers its goods and services under the BE WELL Marks throughout the United States and has developed significant good will in those BE WELL Marks.

5. Opposer also has established common law rights in the BE WELL Marks and has continuously used BE WELL on significant advertising, promotion and on products including its website (www.bewell.com), supplements, and shakes.

6. The BE WELL marks also are used to sponsor health and wellness presentations, seminars, and online learnings. *See Exhibit 1.*

7. By virtue of these longstanding uses of the BE WELL Marks, their valuable reputation for quality, and Opposer's expenditure of significant financial resources to promote and advertise them, the BE WELL Marks have acquired substantial association with Opposer's goods and services in the minds of the public.

8. On information and belief, on or about June 8, 2016, Applicant filed the Application for BE WELL BY KELLY at the United States Patent and Trademark Office. Applicant claims a first use date of May 21, 2013. On information and belief, the Application was published in the Official Gazette on November 22, 2016, with the following identification of services in International Class 44:

Counseling services in the fields of health, nutrition and lifestyle wellness; Nutrition counseling; Providing information about dietary supplements and nutrition; Providing a website featuring information about health, wellness and nutrition; Providing healthy lifestyle and nutrition services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling.

9. On information and belief, Applicant did not use the mark in the Application prior to Opposer's priority dates.

10. Opposer's use of, applications for, and registrations of the BE WELL Marks are significantly prior to Applicant's use of the mark in the Application.

11. The requested mark in the Application is likely to be confused with Opposer's BE WELL Marks because it is confusingly similar in appearance, sound, and meaning to the BE WELL Marks, and conveys a confusingly similar commercial impression.

12. The services in the Application are closely related to, and/or identical to, the services of Opposer and use of Applicant's mark on such services would so nearly resemble Opposer's use as to be likely to cause confusion, mistake, and/or deception.

13. If Applicant is permitted to register the mark in the Application, Opposer will be damaged because, among other reasons, confusion in the trade and in the public is likely to result, injuring Opposer's reputation in the trade and with the public. That confusion will also injure the public, in that consumers, upon seeing Applicant's mark used in connection with Applicant's services, are likely to believe that Applicant's services are somehow associated with or approved by the Opposer.

WHEREFORE, Opposer prays that Application Serial No. 87/064690 be rejected, that no registrations be issued to Applicant, and that this opposition be sustained in favor of Opposer.

Please address all USPTO communications regarding this Notice of Opposition to:

J. Noah Hagey
BraunHagey & Borden LLP
220 Sansome Street, 2nd Floor
San Francisco, CA 94105
tmadmin@braunhagey.com
Hagey@braunhagey.com

Date: May 15, 2017

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By:



J. Noah Hagey

Attorneys for Opposer Be Well Health &
Wellness, LLC

EXHIBIT 1

BE WELL
by Dr. Frank Lipman
Healthy Living
Made Simple

Shop

- CLEANSSES
- PROTEIN SHAKES
- SUPPLEMENTS
- SUPERFOODS
- WELLNESS SERVICES

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SEARCH ACCOUNT CART 0

The BE WELL® BLOG

HEALTH & WELLNESS NUTRITION MOVEMENT MIND & SPIRIT ENVIRONMENT CULTURE FAQ'S

FOOD

THE BE WELL RECIPE: COCONUT PAPAYA SMOOTHIE

Mar. 21, 2017 | Alison Wu

This cauliflower-and-coconut-based smoothie will brighten up your morning, with MCT oil for energy and healthy fats and probiotic powder and papaya for a healthy gut. Coconut-Papaya Smoothie (Serves 2) Ingredients: 2 cups frozen cauliflower 1 cup papaya 1 cup coconut milk ½ cup coconut butter 2 Tbsp ground flaxseed 1 Tbsp + 1 tsp Be Well MCT Oil 1 tsp Be Well Probiotic Powder 3 ice cubes To garnish: Dried

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SEARCH ACCOUNT CART 0

CLEAN SWEEP

Join Dr. Frank Lipman and Drunk Elephant skincare founder Tiffany Masterson for an important conversation on the elimination of toxic chemicals from our everyday lives. Learn how to make informed, educated choices for healthier, cleaner living.

Moderated by Robin Shobin of Charlotte's Book

Monday, March 27th at 4pm EST via webinar.

When you join, you will be entered to win:

\$250 gift card to Be Well + the entire Drunk Elephant product line (\$635 value)*

Email Address

JOIN NOW →

By joining, I agree to receive newsletters and special offers from Be Well, Drunk Elephant, and Charlotte's Book.

DR. FRANK LIPMAN
Pioneer in Functional Medicine

New York Times best-selling author Dr. Lipman is an internationally renowned expert in the field of functional medicine and the founder of Be Well, a wellness brand based on simple, intuitive, and actionable life changes that are sustainable.

TIFFANY MASTERSON
Founder of Drunk Elephant

Mother of four, Tiffany Masterson created Drunk Elephant out of a passion to learn more about ingredients, the effect they have on skin health, and to get to the root causes of confused, irritated, "sensitive" skin.

ROBIN SHOBIN
Founder of Charlotte's Book

An ex-Wall Street, Robin Shobin launched Charlotte'sBook.com — an honest, fresh, and forward-thinking resource for cosmetics health and wellness — in 2014.

Be Well Health & Wellness LLC [US] | https://www.bewell.com/wellness-services/health-coaching/

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BE WELL • DRUNK ELEPHANT • CHARLOTTE'S BOOK

Q SEARCH | ACCOUNT | CART 4

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YOUR HEALTH COACH WILL:

- Create a personal plan tailored to your exact situation
- Help you make safe, sustainable changes that are best for your body
- Identify nutritional red flags and help you understand what foods to embrace and avoid
- Provide insight, inspiration, support and accountability to help you feel your best

COACHING | **CLEARING** | **TRIP-UP**

50-minute call, \$150 | One Clearer At a time 30-minute call, \$99 | Six 30-minute calls, \$750

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CLEANSES
PROTEIN SHAKES
SUPPLEMENTS
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WELLNESS SERVICES

Learn
BLOG
AFTER CLEARSE
TESTIMONIALS
HEALTHY LIVING 101

PROTEIN SHAKES

[SHOP ALL](#)

The image shows three tall glasses filled with smoothies. The first is yellow with a banana slice on top. The second is red with a strawberry on top. The third is green with a kiwi slice on top. To the right of the glasses is a white container of BEWELL protein powder with a purple band at the bottom.

PROTEIN SHAKES & SUPERFOODS

FOR VITALITY, IMMUNITY AND A HEALTHY METABOLISM

Energizing. Easy-to-digest. Low in Calories & Carbohydrates. Use as a meal replacement, snack, or to fuel a workout. 100% non-GMO ingredients.

PLANT-BASED WHEY-BASED SUPERFOODS NEW ALL



GREENS
ANTIOXIDANT-RICH PHYTONUTRIENTS

★★★★★

*Subtle greens flavor
Non-GMO. Vegetarian*

\$39

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PHYTOGREENS
CONCENTRATED GREEN PHYTONUTRIENTS

★★★★★

*Unflavored
Non-GMO. Vegetarian*

\$39

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PHYTOREDS
CONCENTRATED RED PHYTONUTRIENTS

★★★★★

*Strawberry
Non-GMO. Vegetarian*

\$39

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GET YOUR HEALTH ON TRACK

*The Be Well Cleanse: Life Changing Results
Doctor Developed. Patient Proven.*

[CHOOSE YOUR DETOX](#)

SUPPLEMENTS

SHOP ALL



TESTIMONIALS

“ I can't recommend him highly enough. ”

— Gwyneth Paltrow



WELLNESS SERVICES

PRIVATE COACHING & CORPORATE



SUPERFOODS


CHOOSE GREENS OR REDS.



REBOOT YOUR BODY'S NATURAL DETOX SYSTEM

FEEL LIGHTER. MORE FOCUSED. AND MORE ALIVE.

The quickest way to get your health on track. Join thousands who have experienced incredible results. Gluten, Dairy & Soy Free. Non-GMO. Vegetarian.




14-DAY CLEANSE
★★★★★

Our classic cleanse
3 shakes & 2 meals a day

Organic protein & fruit & veg + vitamins, minerals, fiber and herbs to energize the detox organs

\$239

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14-DAY CLEANSE PLUS
★★★★★

For a deeper cleanse
3 shakes & 2 meals a day

Includes the Cleanse kit + 30 days of Probiotics & S-Acetyl Glutathione

\$329

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28-DAY CLEANSE PLUS EXTENDED
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For maximum weight loss
2 shakes & 2 meals a day

Includes the Cleanse Plus Kit + Additional Cleanse shakes & Cleanse Supplements

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PROTEIN SHAKES & SUPERFOODS

FOR VITALITY, IMMUNITY AND A HEALTHY METABOLISM

Energizing, Easy-to-digest, Low in Calories & Carbohydrates. Use as a meal replacement, snack, or to fuel a workout. 100% non-GMO ingredients.

PLANT-BASED WHEY-BASED SUPERFOODS NEW ALL



SUSTAIN PLANT PROTEIN
+ VITAMINS, MINERALS & FIBER

★★★★★
Vanilla
Gluten, Dairy & Soy free

from \$39

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NEW

SUSTAIN PLANT PROTEIN
+ VITAMINS, MINERALS & FIBER

★★★★★
Vanilla / Chocolate
Gluten, Dairy & Soy free

\$49

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NEW

SUSTAIN WHEY PROTEIN
+ VITAMINS, MINERALS & FIBER

★★★★★
Vanilla / Chocolate
Grass-fed / Hormone & Antibiotic Free

\$49

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CLEANSE SHAKES
ORGANIC PLANT PROTEIN + VITAMINS, MINERALS, FIBER, HERBS & SUPERFOODS

★★★★★
Vanilla-berry
Gluten, Dairy & Soy free

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NEW

RECHARGE PLANT PROTEIN
+ BLEND OF ORGANIC SUPERFOODS

★★★★★
Vanilla-berry
Gluten, Dairy & Soy free

\$49

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RECHARGE WHEY PROTEIN
+ BLEND OF ORGANIC SUPERFOODS

★★★★★
Vanilla-berry
Grass-fed / Hormone & Antibiotic free

from \$39

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NEW

ORGANIC PLANT PROTEIN - VANILLA
PURE ORGANIC PEA PROTEIN

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Vanilla / Unflavored
Gluten, Dairy & Soy free

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WHEY PROTEIN
FROM GRASS-FED COWS

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Vanilla / Chocolate
Hormone, Antibiotic & rBGH Free

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GREENS
ANTIOXIDANT-RICH PHYTONUTRIENTS

★★★★★
Subtle greens flavor
Non-GMO, Vegetarian

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PHYTOGREENS
CONCENTRATED GREEN PHYTONUTRIENTS

★★★★★
Unflavored
Non-GMO, Vegetarian

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NEW

PHYTOREDS
CONCENTRATED RED PHYTONUTRIENTS

★★★★★
Strawberry
Non-GMO, Vegetarian

\$39

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DOCTOR-DEVELOPED SUPPLEMENTS

The same supplements used by Dr. Lipman in his practice
Boost overall health, fill nutritional gaps, overcome deficiencies

We are committed to providing only sustainably sourced, non-GMO & gluten-free products.

MOST POPULAR HEALTH GOALS BY CATEGORY NEW ALL



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IMPROVE YOUR BODY'S RESPONSE TO STRESS

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Non-GMO, Vegetarian

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ALPHA LIPOIC ACID
POTENT AND VERSATILE ANTIOXIDANT

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NATURAL ANTI-INFLAMMATORY

Non-GMO, Vegetarian

\$19

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COMPLETE MULTIVITAMIN
FOR OVERALL HEALTH & WELLNESS

★★★★★
Non-GMO, Vegetarian

\$19

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EXTREMELY VERSATILE ANTIOXIDANT



DAILY DOSE
KEY DAILY NUTRIENTS



DAILY MULTIVITAMIN
FOR OVERALL HEALTH & WELLNESS



DIGESTIVE ENZYMES
FOR IMPROVED DIGESTION