

ESTTA Tracking number: **ESTTA879637**

Filing date: **02/26/2018**

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	Bayer Healthcare LLC
Granted to Date of previous extension	02/25/2018
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES

Attorney information	Jessica A. Ekhoft Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 200 S. Wacker Dr. Ste. 2900 Chicago, IL 60606 UNITED STATES Email: jae@pattishall.com, pb@pattishall.com, jrp@pattishall.com, cas@pattishall.com, docket@pattishall.com
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Applicant Information

Application No	87415764	Publication date	08/29/2017
Opposition Filing Date	02/26/2018	Opposition Period Ends	02/25/2018
Applicant	Unique Bio Ingredients LLC 9110 NW 106TH ST Medley, FL 33178 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2017/04/15 First Use In Commerce: 2017/04/15 All goods and services in the class are opposed, namely: Probiotic supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1536042	Application Date	05/05/1988
Registration Date	04/25/1989	Foreign Priority Date	NONE
Word Mark	ALEVE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1988/04/25 First Use In Commerce: 1988/04/25 ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS

U.S. Registration No.	3287780	Application Date	02/13/2007
Registration Date	09/04/2007	Foreign Priority Date	NONE

Word Mark	ALEVE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2000/07/31 First Use In Commerce: 2000/07/31 Pharmaceutical antitussive-cold preparations; Preparations for treating colds
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U.S. Registration No.	3719030	Application Date	05/25/2007
Registration Date	12/01/2009	Foreign Priority Date	NONE


Word Mark	ALEVE-D
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2007/07/20 First Use In Commerce: 2007/07/20 Antitussive-cold preparations; preparations for treating colds
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U.S. Registration No.	4459303	Application Date	07/24/2013
Registration Date	12/31/2013	Foreign Priority	NONE

		Date	
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2010/08/27 First Use In Commerce: 2010/08/27 healthcare information services on painrelief, namely providing an online resource of information on joint, muscle andback pain, headache pain and osteoarthritis, including treatment options and tips		

U.S. Registration No.	5279528	Application Date	08/08/2016
Registration Date	09/05/2017	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2016/06/24 First Use In Commerce: 2016/06/24 Electrical stimulation apparatus for nerves for therapeutic purposes		

Attachments	77105868#TMSN.png(bytes) 77190305#TMSN.png(bytes) 86018399#TMSN.png(bytes) 87130338#TMSN.png(bytes) Notice of Opposition - ALIVIO ESTOMACAL 247.pdf(222469 bytes)
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Signature	/Jessica A. Ekhoﬀ/
Name	Jessica A. Ekhoﬀ
Date	02/26/2018

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Ser. No. 87/415,764: ALIVIO ESTOMACAL 24/7

BAYER HEALTHCARE LLC,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	
)	
UNIQUE BIO INGREDIENTS LLC,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Bayer HealthCare LLC, a Delaware limited liability company having offices in Pittsburgh, Pennsylvania, believes it will be damaged by registration of the mark identified in App. Ser. No. 87/415,764 (the “Application”) and files this notice of opposition pursuant to 37 C.F.R. § 2.104(a). The grounds for opposition are stated below.

1. Opposer and its predecessors have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including products for the treatment of pain, inflammation, fever, and colds.

2. Since long prior to the filing date of the Application, Opposer and its predecessors have continuously used the trademark ALEVE in commerce throughout the United States in connection with the advertising, promotion and sale of products for the treatment of pain, inflammation, fever, and colds.

3. Opposer owns the trademark registrations shown below, all comprised of its ALEVE trademark.


MARK	REG. NO.	REG. DATE	GOODS AND SERVICES
ALEVE	1,536,042	April 25, 1989	Anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations in Class 5
ALEVE	3,287,780	September 4, 2007	Pharmaceutical antitussive-cold preparations; Preparations for treating colds in Class 5
ALEVE-D	3,719,030	December 1, 2009	Antitussive-cold preparations; preparations for treating colds in Class 5
ALEVE	4,459,303	December 31, 2013	Healthcare information services on pain relief, namely providing an online resource of information on joint, muscle and back pain, headache pain and osteoarthritis, including treatment options and tips in Class 44
ALEVE	5,279,528	September 5, 2017	Electrical stimulation apparatus for nerves for therapeutic purposes in Class 10


Print-outs from the United States Patent and Trademark Office records showing the current status of these registrations are attached hereto as Exhibit A. Registration Nos. 1,536,042; 3,287,780; and 3,719,030 are incontestable pursuant to 15 U.S.C. § 1065 and 1115(b).


4. By virtue of Opposer's and its predecessors' extensive sales, advertising and promotion of pain, inflammation, fever, and cold relief products under its ALEVE trademark, Opposer and its predecessors have built up and Opposer now owns valuable goodwill symbolized by its ALEVE trademark.

5. By virtue of the aforesaid extensive sales, advertising and promotion, the ALEVE trademark is famous among the general consuming public of the United States.


6. Applicant applied to register the mark ALIVIO ESTOMACAL 24/7 and Design,

ALIVIO  ESTOMACAL, for "Probiotic supplements" in Class 5.

7. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any basis for claiming rights in the ^{ALIVIO 24/7 } **ESTOMACAL** trademark before April 15, 2017, the first use date claimed in the Application opposed herein.

8. Use of the ^{ALIVIO 24/7 } **ESTOMACAL** mark identified in the Application for “Probiotic supplements” in Class 5 is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant’s goods in that purchasers are likely to believe that Applicant’s goods are Opposer’s goods, or are in some way legitimately connected with, licensed or approved by Opposer.

9. Use of the mark shown in the Application in connection with the goods stated therein is likely to dilute the distinctiveness of Opposer’s famous ALEVE trademark.

10. Applicant’s use of the ^{ALIVIO 24/7 } **ESTOMACAL** mark shown in the Application is without Opposer’s consent or permission.

Opposer submits the requisite filing fee of \$400.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650, and address all correspondence to Phillip Barengolts, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 200 South Wacker Drive, Suite 2900, Chicago, Illinois 60606.

Dated: February 26, 2018

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

By: /Jessica A. Ekhoff/

Phillip Barengolts
Jessica A. Ekhoff
Jacquelyn R. Prom
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Suite 2900
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Bayer HealthCare LLC

EXHIBIT A



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 26 03:31:03 EST 2018

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Typed Drawing

Word Mark ALEVE

Goods and Services IC 005. US 018. G & S: ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS. FIRST USE: 19880425. FIRST USE IN COMMERCE: 19880425

Mark Drawing Code (1) TYPED DRAWING

Serial Number 73726530

Filing Date May 5, 1988

Current Basis 1A

Original Filing Basis 1A

Published for Opposition January 31, 1989

Registration Number **1536042**

Registration Date April 25, 1989

Owner (REGISTRANT) SYNTEX PUERTO RICO, INC. CORPORATION PANAMA RURAL BOX NO. 6736 80 MARIANA ROAD, 909 KM.1.1 HUMACO PUERTO RICO 00661

(LAST LISTED OWNER) BAYER HEALTHCARE LLC LIMITED LIABILITY COMPANY DELAWARE 100 BAYER ROAD PITTSBURGH PENNSYLVANIA 15205

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Jeffrey M. Gitchel

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090721.

Renewal 1ST RENEWAL 20090721

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ALEVE

Word Mark ALEVE

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical antitussive-cold preparations; Preparations for treating colds. FIRST USE: 20000731. FIRST USE IN COMMERCE: 20000731

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77105868

Filing Date February 13, 2007

Current Basis 1A

Original Filing Basis 1A

Published for Opposition June 19, 2007

Registration Number 3287780

Registration Date September 4, 2007

Owner (REGISTRANT) Bayer HealthCare LLC LIMITED LIABILITY COMPANY DELAWARE 100 Bayer Road Pittsburgh PENNSYLVANIA 15205

Attorney of Record Jeffrey M. Gitchel

Prior Registrations 1536042

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20170911.

Renewal 1ST RENEWAL 20170911

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ALEVE-D

Word Mark ALEVE-D

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Antitussive-cold preparations; preparations for treating colds. FIRST USE: 20070720. FIRST USE IN COMMERCE: 20070720

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility LETS-1 D A single letter, multiples of a single letter or in combination with a design NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

Classification Code signs,prescription marks

Serial Number 77190305

Filing Date May 25, 2007

Current Basis 1A

Original Filing Basis 1B

Published for Opposition November 6, 2007

Registration Number 3719030

Registration Date December 1, 2009

Owner (REGISTRANT) Bayer HealthCare LLC LIMITED LIABILITY COMPANY DELAWARE 100 Bayer Road Pittsburgh PENNSYLVANIA 15205

Attorney of Record Jeffrey M. Gitchel

Prior Registrations 1536042;2177899;3287780

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

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ALEVE

Word Mark ALEVE

Goods and Services IC 044. US 100 101. G & S: healthcare information services on pain relief, namely providing an online resource of information on joint, muscle and back pain, headache pain and osteoarthritis, including treatment options and tips. FIRST USE: 20100827. FIRST USE IN COMMERCE: 20100827

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86018399

Filing Date July 24, 2013

Current Basis 1A

Original Filing Basis 1A

Published for Opposition October 15, 2013

Registration Number 4459303

Registration Date December 31, 2013

Owner (REGISTRANT) Bayer HealthCare LLC LIMITED LIABILITY COMPANY DELAWARE 100 Bayer Road Pittsburgh PENNSYLVANIA 15205

Attorney of Record Jeffrey M. Gitchel

Prior Registrations 1536042;3287780;3719030

Type of Mark SERVICE MARK

Register PRINCIPAL

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ALEVE

Word Mark ALEVE

Goods and Services IC 010. US 026 039 044. G & S: Electrical stimulation apparatus for nerves for therapeutic purposes. FIRST USE: 20160624. FIRST USE IN COMMERCE: 20160624

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 87130338

Filing Date August 8, 2016

Current Basis 1A

Original Filing Basis 1A

Published for Opposition June 20, 2017

Registration Number 5279528

Registration Date September 5, 2017

Owner (REGISTRANT) Bayer HealthCare LLC LIMITED LIABILITY COMPANY DELAWARE 100 Bayer Road Pittsburgh PENNSYLVANIA 15205

Attorney of Record Jeffrey M. Gitchel

Prior Registrations 1536042;3287780;4459303

Type of Mark TRADEMARK

Register PRINCIPAL

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