

ESTTA Tracking number: **ESTTA922348**

Filing date: **09/14/2018**

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	doTERRA Holdings, LLC
Granted to Date of previous extension	09/19/2018
Address	389 South 1300 West Pleasant Grove, UT 84062 UNITED STATES

Correspondence information	Krista Weber Powell Attorney of Record, Utah State Bar member TRASKBRITT, P.C. 230 South 500 East, #300 Salt Lake City, UT 84102 UNITED STATES trademark@traskbritt.com, hdburton@traskbritt.com, kwpowell@traskbritt.com, lmondragon@traskbritt.com 801-532-1922
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Applicant Information

Application No	86825141	Publication date	05/22/2018
Opposition Filing Date	09/14/2018	Opposition Period Ends	09/19/2018
Applicant	Traditional Medicinals, Inc. 4515 Ross Road Sebastopol, CA 95472 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Essential oils for aromatherapy use; essential oils for use in aromatherapy; essential oils for personal use; non-medicated skin creams; non-medicated skin creams with essential oils for use in aromatherapy
Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Products for the treatment of congestion and cough, namely, topical aromatherapy cream, topical gel in the nature of a rub for therapeutic treatment, and mentholated ointment for medical use; Antitussives in the nature of topical cream, rub, and ointment for the treatment of coughs; Decongestant; Medicated vapor decongestant chest rubs for the treatment of coughs; External medication in the nature or medicated bath preparations for the relief of cold symptoms, namely, cough and congestion; Respiratory stimulants; Aromatherapy creams and ointments in the nature of lotions for relief of cough and congestion; Aromatherapy oils for relief of cold symptoms, namely, cough and congestion

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	87080222	Application Date	06/22/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BREATHE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2008/04/01 First Use In Commerce: 2008/04/25 Aromatic essential oils; Essential oils; Essential oils for aromatherapy use; Essential oils for household use; Essential oils for personal use; Ethereal oils; Natural essential oils Class 005. First use: First Use: 2014/09/18 First Use In Commerce: 2014/09/18 Cough lozenges; Throat lozenges		

Attachments	87080222#TMSN.png(bytes) 18-09-14 Notice of Opposition BREATHE EASY.pdf(580732 bytes)
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Signature	/Krista Weber Powell/
Name	Krista Weber Powell
Date	09/14/2018

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

<p>dōTERRA HOLDINGS, LLC</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>TRADITIONAL MEDICINALS, INC.</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. (_____)</p> <p>Mark: BREATHE EASY</p> <p>Int'l Class: 003, 005</p> <p>Serial No.: 86825141</p> <p>Filed: November 18, 2015</p>
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NOTICE OF OPPOSITION

Opposer, dōTERRA Holdings, LLC (“dōTERRA”) is a limited liability company organized and existing under the laws of the State of Utah, with its principal place of business located at 389 South 1300 West, Pleasant Grove, Utah 84062. dōTERRA believes that it will be damaged by the registration of the mark appearing in pending Trademark Application Serial No. 86/825141 (the “subject mark”) of Traditional Medicinals, Inc. (“Applicant”) and hereby opposes the same.

As grounds for the present opposition, dōTERRA alleges, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters, as follows:

1. dōTERRA began using its BREATHE trademark in interstate commerce in connection with the sale and promotion of essential oils at least as early as April 2008 and with cough and throat lozenges since at least as early as September 2014. dōTERRA has thereafter continuously used BREATHE in advertising, promoting, marketing and selling its products throughout the United States. Since at least as early as April 2008, dōTERRA has used

BREATHE, in various forms, in interstate commerce in connection with the sale and promotion of its products.

2. dōTERRA's BREATHE trademark is inherently distinctive as applied to its products.

3. By virtue of dōTERRA's continuous use in commerce of its BREATHE mark in connection with its dōTERRA line of products, such products have become well and favorably known to the relevant trade and public.

4. dōTERRA has invested substantial time, effort and expense in extensive promotion throughout the United States of the goods sold under its BREATHE mark. As a result, considerable goodwill has attached to the mark BREATHE to dōTERRA's benefit.

5. The BREATHE mark is representative of dōTERRA's reputation for designing and providing high quality products and symbolizes the goodwill of dōTERRA, which is invaluable.

6. Applicant is the listed owner of the subject mark, Application Serial No. 86825141 filed November 18, 2015, for the mark BREATHE EASY in:

- a. International Classes 003 for the following goods: "Essential oils for aromatherapy use; essential oils for use in aromatherapy; essential oils for personal use; non-medicated skin creams; non-medicated skin creams with essential oils for use in aromatherapy."
- b. International Classes 005 for the following goods: "Products for the treatment of congestion and cough, namely, topical aromatherapy cream, topical gel in the nature of a rub for therapeutic treatment, and mentholated ointment for medical use; Antitussives in the nature of topical cream, rub, and ointment for

the treatment of coughs; Decongestant; Medicated vapor decongestant chest rubs for the treatment of coughs; External medication in the nature or medicated bath preparations for the relief of cold symptoms, namely, cough and congestion; Respiratory stimulants; Aromatherapy creams and ointments in the nature of lotions for relief of cough and congestion; Aromatherapy oils for relief of cold symptoms, namely, cough and congestion.”

7. dōTERRA has priority of use in the BREATHE mark. dōTERRA has continuously used the BREATHE marks in advertising, promoting, and marketing its products throughout the United States years prior to the date of Applicant’s application to register the subject mark.

8. dōTERRA filed a trademark application Serial No. 87080222 for BREATHE on June 22, 2016. The application has been rejected by the Examiner under Section 2(d) in view of Applicant’s BREATHE EASY application.

9. The subject mark will be or is being used for goods that are closely related to the goods offered by dōTERRA in connection with its BREATHE mark.

10. Applicant’s goods would be directed to the same customer segment of the consuming public as dōTERRA’s goods.

11. The subject mark is substantially similar to dōTERRA and dōTERRA’s family of dōTERRA marks in sound, appearance, connotation, and commercial impression.

12. BREATHE EASY is confusingly similar to dōTERRA’s BREATHE mark.

13. Applicants’ use of the subject mark is likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of Applicant’s goods.

14. Due to the confusingly similar nature of dōTERRA's and Applicant's marks and the similarity of the goods offered under the respective marks, the relevant consuming public and the consuming public generally are likely to believe that Applicant's goods are those of dōTERRA or are in some way connected with, licensed by, or otherwise approved by dōTERRA.

15. Such confusion, mistake and/or deception are likely to damage and injure the purchasing public and dōTERRA.

16. Applicant's application and use of BREATHE EASY are without the consent or approval of dōTERRA.

17. Based on the foregoing, dōTERRA believes that it will be damaged by the registration of the BREATHE EASY mark in the United States Patent and Trademark Office.

ACCORDINGLY, dōTERRA prays that the present opposition be sustained and that registration of the subject mark be refused with respect to classes 003 and 005.

DATED this 14th day of September, 2018.

TRASKBRITT, P.C.

Attorneys for dōTERRA Holdings, LLC.

/H. Dickson Burton/

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