

ESTTA Tracking number: **ESTTA993519**

Filing date: **08/08/2019**

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	Theragun, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	2803 Colorado Avenue Santa Monica, CA 90404 UNITED STATES		

Attorney information	Rod S. Berman Jeffer Mangels Butler & Mitchell LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 UNITED STATES trademarkdocket@jmbm.com 310-203-8080		
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Applicant Information

Application No	88369252	Publication date	07/23/2019
Opposition Filing Date	08/08/2019	Opposition Period Ends	08/22/2019
Applicant	Theragen, Inc. 201-F Royal Street Leesburg, VA 20175 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medical devices, namely, electrostimulatory devices for tissue, bone and/or joint treatment, medical treatment apparel, and a kit comprising an electrostimulatory device and medical treatment apparel
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Applicant Information

Application No	88369266	Publication date	07/23/2019
Opposition Filing Date	08/08/2019	Opposition Period Ends	08/22/2019
Applicant	Theragen, Inc. 201-F Royal Street Leesburg, VA 20175 UNITED STATES		

Goods/Services Affected by Opposition


Class 010. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Medical devices, namely, electrostimulatory devices for tissue, bone and/or joint treatment, medical treatment apparel, and a kit comprising an electrostimulatory device and medical treatment apparel


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.	5213141	Application Date	10/17/2016
Registration Date	05/30/2017	Foreign Priority Date	NONE
Word Mark	THERAGUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2015/05/31 First Use In Commerce: 2015/05/31 Massage apparatus; Massage apparatus and instruments; Massage apparatus for massaging injured muscles; Massaging apparatus for personal use; Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes; Electric massage appliances, namely, electric vibrating massager; Electric massage appliances, namely, electric vibrating massager; Foot massage apparatus Class 025. First use: First Use: 2016/10/13 First Use In Commerce: 2016/10/13 Hats; T-shirts; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baseball caps and hats; Short-sleeved or long-sleeved t-shirts		

U.S. Registration No.	4760327	Application Date	11/06/2014
Registration Date	06/23/2015	Foreign Priority Date	NONE
Word Mark	THERAGUNZ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2014/07/19 First Use In Commerce: 2014/07/19 Vibrating apparatus used to stimulate muscles and increase strength and physical performance for health and medical purposes Class 025. First use: First Use: 2014/09/15 First Use In Commerce: 2014/09/15 Hats; Shirts; Socks

Attachments	87206326#TMSN.png(bytes) 86447506#TMSN.png(bytes) Notice of Opposition Theragun LLC v Theragen Inc - THERAGEN word and design marks.pdf(105446 bytes)
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Signature	/rod s. berman/
Name	Rod S. Berman
Date	08/08/2019

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

THERAGUN, LLC,

Opposer,

v.

THERAGEN, INC.,

Applicant.

Opposition No. _____

Appl. Serial Nos.: 88/369,252 and 88/369,266

Marks: THERAGEN



Published for Opposition: July 23, 2019

Atty. Ref. No.: 76840-9019

NOTICE OF OPPOSITION

Opposer, Theragun, LLC, a Delaware limited liability company, having its principal place of business located at 2803 Colorado Avenue, Santa Monica, California 90404 ("Opposer"), believes that it is and will be damaged by the registration on the Principal Register of the marks THERAGEN and THERAGEN & Design allegedly owned by Theragen, Inc. ("Applicant"), that is the subject of Apps. Serial No. 88/369,252 and 88/369,266, both in connection with "Medical devices, namely, electrostimulatory devices for tissue, bone and/or joint treatment, medical treatment apparel, and a kit comprising an electrostimulatory device and medical treatment apparel" in Int. Cl. 10 ("the Applications"), and Opposer hereby opposes registration thereof.

As grounds for this Opposition, it is alleged that:

1. Opposer is the owner of record of Registration No. 5,213,141 for the mark THERAGUN in Classes 10 and 25, and is also the owner of all common law rights in the mark, including all of the business and goodwill connected therewith. This registration issued from an application filed on October 17, 2016. This registration has not been revoked or cancelled.
2. Opposer is the owner of record of Registration No. 4,760,327 for the mark

THERAGUNZ in Classes 10 and 25, and is also the owner of all common law rights in the mark, including all of the business and goodwill connected therewith. This registration issued from an application filed on November 6, 2014. This registration has not been revoked or cancelled.

3. Opposer's marks described in Paragraphs 1 and 2 above, and as reflected in Opposer's U.S. Reg. Nos. 5,213,141 and 4,760,327 are collectively referred to herein as "Opposer's Mark."

4. On information and belief, Applicant is the owner of record of trademark application Ser. No. 88/369,252 for THERAGEN, and trademark application Ser. No. 88/369,266 for THERAGEN & Design, ("Applicant's Marks") both filed on April 3, 2019, for use in connection with "Medical devices, namely, electrostimulatory devices for tissue, bone and/or joint treatment, medical treatment apparel, and a kit comprising an electrostimulatory device and medical treatment apparel" in Int. Cl. 10 ("Applicant's Goods").

5. Since long prior to April 3, 2019, the filing date of the Applications, Opposer has widely advertised and promoted Opposer's Mark in connection with its goods with the result that Opposer's Mark has become well known and exclusively associated with Opposer in the United States. Because of these efforts, and by virtue of the excellence and success of the goods offered and provided by Opposer under Opposer's Mark, Opposer has built up a valuable reputation and tremendous goodwill in Opposer's Mark, which goodwill belongs exclusively to Opposer.

6. Applicant's Marks, in connection with Applicant's Goods, so resemble Opposer's Mark as to be likely, when used in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Applicant's Marks, therefore, create a confusingly similar commercial impression. Applicant's Goods, and the goods sold by Opposer in connection with Opposer's Mark are both in Class 10. Because of the similarity of the respective

marks and goods, consumers will likely believe that Applicant's use of the mark THERAGEN in connection with Applicant's Goods is in some way associated with, connected with, or sponsored, authorized, approved, or licensed by Opposer.

7. Applicant's Marks, in connection with Applicant's Goods, so resemble Opposer's Mark that it is likely to create a false designation of origin and false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection, or association between Opposer and Applicant. Any objection or fault with Applicant's Goods offered in connection with Applicant's Marks may reflect upon and injure Opposer's reputation or the goodwill Opposer has established in Opposer's Mark.

8. If Applicant is granted the registrations herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to use of the mark THERAGEN in connection with Applicant's Goods as identified in application Serial Nos. 88/369,252 and 88/369,266. Such registrations would be a source of damage and injury to Opposer.

WHEREFORE, and in accordance with Section 13 of the Trademark Act (15 U.S.C. § 1063), Opposer prays that this Opposition be sustained and that Application Serial Nos. 88/369,252 and 88/369,266 be refused.

Respectfully submitted,

Dated: August 8, 2019

/s/ Rod S. Berman
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