

ESTTA Tracking number: **ESTTA1131740**

Filing date: **05/05/2021**

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	Traditional Medicinals, Inc.
Granted to Date of previous extension	05/08/2021
Address	1400 VALLEY HOUSE DRIVE, SUITE 120 ROHNERT PARK, CA 94928 UNITED STATES

Correspondence information	JEREMY JOHNSON TRADITIONAL MEDICINALS, INC. 1400 VALLEY HOUSE DRIVE, SUITE 120 ROHNERT PARK, CA 94928 UNITED STATES Primary Email: jjohnson@tradmed.com Secondary Email(s): trademarks@tradmed.com , jpeterson@tradmed.com , galbers@tradmed.com No phone number provided.
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Applicant Information

Application No.	90211937	Publication date	03/09/2021
Opposition Filing Date	05/05/2021	Opposition Period Ends	05/08/2021
Applicant	CFC of Georgia, Inc. 1649 INTERNATIONAL COURT NORCROSS, GA 30093 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2020/04/00 First Use In Commerce: 2020/04/00 All goods and services in the class are opposed, namely: (Based on Use in Commerce) Tea-based beverages; Tea-based beverages with fruit flavoring(Based on Intent to Use) Tea bags
Class 032. First Use: 2020/04/00 First Use In Commerce: 2020/04/00 All goods and services in the class are opposed, namely: Non-alcoholic beverages with tea flavor; Non-alcoholic water-based beverages also containing ginseng

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
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Attachments	Opposition_Tea for EveryDay Wellness_Ser No 90211937.pdf(753876 bytes)
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Signature	/Jeremy Johnson/
Name	JEREMY JOHNSON
Date	05/05/2021

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

TRADITIONAL MEDICINALS, INC.)	Opposition No.: _____
Opposer,)	
)	Serial No.: 90211937
v.)	Mark: TEA FOR EVERYDAY
)	WELLNESS
)	
)	
CFC of Georgia, Inc.)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, Traditional Medicinals, Inc. (“Opposer”), a benefit corporation organized and existing under the laws of the State of California, believes that it will be damaged by the registration of the mark TEA FOR EVERYDAY WELLNESS as applied for in Application Serial No. 90211937.

Opposer, having previously been granted an extension of time to oppose Applicant’s Mark, hereby opposes the same.

As grounds for this Notice of Opposition, Opposer respectfully submits:

1. Opposer is a benefit corporation organized and existing under the laws of the State of California, having a place of business at 1400 Valley House Drive, Suite 120, Rohnert Park CA 94928.
2. Founded in 1974, Opposer is a leading manufacturer of tea and herbal supplements. Opposer is committed to using high quality ingredients with a focus on purity and sustainability of resources used. Opposer has developed a reputation for safe and effective products that have been used and trusted for decades. Opposer is well known in the natural health foods industry as providing health and wellness solutions.
3. Applicant is a corporation organized and existing under the laws of the state of Georgia.

4. On September 25, 2020, Applicant filed an application for the mark TEA FOR EVERYDAY WELLNESS (“Applicant’s Mark”) in International Class (IC) 030 for “(Based on Use in Commerce) Tea-based beverages; Tea-based beverages with fruit flavoring (Based on Intent to Use) Tea bags” and in IC 032 for “ Non-alcoholic beverages with tea flavor; Non-alcoholic water-based beverages also containing ginseng.” Applicant claims to have begun use of the mark in commerce only in April of 2020. This trademark application was published for Opposition on March 9, 2021.
5. Since at least as early as 2012, Opposer has used the designation "wellness teas" to identify its goods. Opposer uses and needs to be able to continue to use the “wellness” designation in connection with the promotion and sale of its goods. Indeed, this term is a common designation to identify certain teas and is widely used in the industry.
6. Opposer owned the Registration No. 4278675 for the design mark with “Traditional Medicinals Since 1974 Wellness Teas”, in which Opposer disclaims "wellness teas" because it is a combination of the descriptive term “wellness” with the generic indicator of the goods (i.e., “teas”). Opposer therefore claims no exclusive rights in this portion of its mark. Attached as Exhibit A is a true and correct copy of the USPTO records for the registration.

Standing

7. The primary significance of “tea for everyday wellness” to relevant consumers is as a “tea” (generic designation) consumed “everyday” (descriptive) to promote “wellness” (descriptive term). Applicant’s mark is therefore incapable of distinguishing Applicant's goods from those sold by Opposer and many others in the tea industry. By claiming exclusive rights in the designation "tea for everyday wellness," Applicant seeks to prevent Opposer (and others) from using the precise and common designation that identifies this category of goods sold by Opposer and others. Opposer and its competitors selling teas and

herbal teas, as well as the general public, have used and need to be able to continue to use the designation "tea for everyday wellness" to be able to properly identify these goods.

8. Therefore, Opposer would be injured if Applicant is permitted to obtain a registration for the designation "tea for everyday wellness," giving Applicant the right to exclude Opposer and others in the industry from using this descriptive term to identify their goods.

Descriptiveness

9. The designation "tea for everyday wellness" is merely descriptive of Applicant's goods, and Applicant has not shown and cannot show that the designation has acquired distinctiveness.
10. Competitors in the tea industry very commonly use the term "wellness" to refer to a category of teas intended to be used to promote physical and mental health. In addition to Opposer, other competitors in the tea industry use the term "wellness" or "wellness teas" to describe their goods, including: David's Tea, The Republic of Tea, Celestial Seasonings, Yogi, Stash Tea Company Tea floor, Art of Tea, Amoda, LearningHerbs, Bea's Wellness Teas, Heavenly Tea Leaves, and Tay Tea. Even purveyors of non-herbal teas, such as Bigelow's Teas, promote their products using the term "Everyday Wellness" to highlight the health benefits of daily consumption of either green and black teas.
11. As a descriptive designation without secondary meaning, "tea for everyday wellness" does not distinguish Applicant's goods from goods sold by Opposer and others in the tea industry, particularly those competitors offering herbal teas for sale to the general public.
12. By claiming exclusive rights in the designation "tea for everyday wellness," Applicant seeks to prevent Opposer and others from using the descriptive designation, which is necessary to accurately describe their goods and which was in wide use in the industry long before Applicant's claimed date of first use in commerce.

13. Therefore, Opposer would be injured by the registration sought by Applicant for the descriptive designation "tea for everyday wellness," which would give Applicant the right to exclude Opposer and others in the industry from using ordinary terminology to describe their goods.
14. Based on the foregoing, registration of "tea for everyday wellness" exceeds the scope of permissible registration under 15 U.S.C. § 1052(e)(1), which prohibits registration of merely descriptive terms.
15. Based on the foregoing, registration of "tea for everyday wellness" exceeds the scope of permissible registration under 15 U.S.C. § 1052 for marks "by which the goods of the applicant may be distinguished from the goods of others."

Conclusion

WHEREFORE, Opposer respectfully prays that this Notice of Opposition be sustained and that Application Serial No. 90211937 be refused registration.

Opposer submits herewith the requisite filing fee for Opposition of Applicant's Mark.

Dated this 5th day of May, 2021.

TRADITIONAL MEDICINALS, INC.

/Jeremy M. Johnson/

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EXHIBIT A



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Word Mark
Goods and Services

TRADITIONAL MEDICINALS SINCE 1974 **WELLNESS TEAS**

(CANCELLED) IC 005. US 006 018 044 046 051 052. G & S: medicinal herbal preparations, dietary supplements and herbal supplements, and herbal preparations. FIRST USE: 20120510. FIRST USE IN COMMERCE: 20120510

(CANCELLED) IC 030. US 046. G & S: herbal teas; herbal tea preparations, namely, blends in the nature of dried herbs and herbal tea extracts, and herbal tea preparations, namely, mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages. FIRST USE: 20120510. FIRST USE IN COMMERCE: 20120510

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches
 11.03.03 - Coffee cups
 24.05.01 - Circular or elliptical seals ; Seals, circular or elliptical
 26.01.08 - Circles having letters or numerals as a border ; Circles having punctuation as a border ; Letters, numerals or punctuation forming or bordering the perimeter of a circle
 26.01.17 - Circles, two concentric ; Concentric circles, two ; Two concentric circles
 26.01.21 - Circles that are totally or partially shaded.

Serial Number

85608364

Filing Date

April 25, 2012

Current Basis

1A

Original Filing Basis

1B

Published for Opposition

November 6, 2012

Registration Number

4278675

Registration Date January 22, 2013

Owner (REGISTRANT) Traditional Medicinals, Inc. CORPORATION CALIFORNIA 4515 Ross Road Sebastopol CALIFORNIA 95472

Attorney of Record Jeremy Johnson

Prior Registrations 1302929;1356209;2291127;AND OTHERS

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SINCE 1974", "MEDICINALS", "WELLNESS TEAS" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) brown and beige is/are claimed as a feature of the mark. The mark consists of two concentric circles with outer circle wider than inner circle. Words "Traditional" and "Medicinals" appear in an arc inside smaller circle. Teacup design in the middle of the circle flanked by the word "since" on the left side and "1974" on the right side, and the words "wellness teas" immediately below teacup design. The circles, words and teacup design appear in brown against a beige background.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date August 23, 2019

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