

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

In the Matter of Application Serial No. 76/386561
 Filed on March 25, 2002
 For the mark AGE WELL FORMULAS
 Published in the *Official Gazette* on December 3, 2002



05-07-2003

U.S. Patent & TMO/TM Mail Ropt Dt. #22

AGEWELL, LTD.)
)
)
 Opposer,)
 v.)
)
 OPTIGENE-X, LLC,)
)
)
 Applicant.)

Opposition No. _____

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 TRADEMARK TRIAL AND APPEAL BOARD

NOTICE OF OPPOSITION

Opposer, Agewell, Ltd., believes that it will be damaged by the registration of the AGE WELL FORMULAS mark shown in the above-identified application, and hereby opposes the same.

As grounds for its opposition, Opposer alleges that:

1. Opposer is a corporation organized and existing under the laws of the state of Indiana.
2. Opposer is the owner of the following United States trademark registrations for the family of AGEWELL® marks:

Mark	Class	Description	Registration No.	Date of Registration.
AGEWELL	41	Audio and video recording and production services; book publication services.	2,102,654	October 7, 1997
AGEWELL	42	Geriatric health care services.	2,270,951	August 17, 1999
AGEWELL	41	Conducting workshops and seminars in the	1,943,956	December 26, 1995

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		field of aging and the elderly and concerning the topics of health care, financial resources and personal enrichment activities.		
AGEWELL	9 and 16	(Cl. 9) Pre-recorded audio and video tapes and compact discs related to aspects of aging and the elderly and concerning topics of health care, financial resources and personal enrichment activities; (Cl. 16) Books, pamphlets, magazines, booklets and brochures related to aspects of aging and the elderly and concerning topics of health care, financial resources and personal enrichment activities.	1,920,595	September 19, 1995

3. The foregoing registrations are valid and provide constructive notice of ownership thereof by Opposer.

4. The foregoing registrations constitute *prima facie* evidence of the validity of the registrations and the marks and of Opposer's exclusive right to use the marks in commerce.

5. Since well prior to the filing date of Applicant's intent-to-use application on December 3, 2002, Opposer and its predecessors have extensively promoted and sold its above identified goods and services under the mark AGEWELL® in the United States.

6. Applicant's mark AGE WELL FORMULAS is comprised of Opposer's entire AGEWELL® mark.

7. Applicant intends to use or is using the AGE WELL FORMULAS mark in association with goods that are related to Opposer's AGEWELL® goods and services. In addition, Applicant's goods are sold in the same channel of trade and to the same customers as Opposer's AGEWELL® goods and services.

8. In view of the similarity of the parties' marks and the related goods and services provided by the parties, Applicant's use of the mark AGE WELL FORMULAS is likely to cause confusion, to cause mistake, and lead to deception as to the origin of Applicant's goods.

9. Registration of the AGE WELL FORMULAS mark to Applicant would result in substantial damage and injury to Opposer. Persons familiar with Opposer's marks are likely to purchase Applicant's goods under the mistaken belief that they originate with, or are licensed, sponsored or approved by Opposer. Any such confusion would inevitably result in loss of sales to Opposer, and tarnish Opposer's goodwill and reputation established in its AGEWELL® marks.

WHEREFORE, Opposer respectfully requests that Application Serial No. 76/386561 be refused and that this opposition be sustained.

A duplicate copy of this Notice of Opposition and a check in the amount of \$300 covering the official filing fee are enclosed. Please direct all communications to Angela Fifelski of Ice Miller, One American Square, Box 82001, Indianapolis, Indiana 46282-0002.

Respectfully submitted,

AGWELL, LTD.

Dated: May 5, 2003

By: Angela M. Fifelski

Angela M. Fifelski
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