

ESTTA Tracking number: **ESTTA525405**

Filing date: **03/07/2013**

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	04/24/2013
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES
Attorney information	Tara M. Vold Fulbright & Jaworski L.L.P. 801 Pennsylvania Avenue, NW Washington, DC 20004 UNITED STATES aotrademark@fulbright.com Phone:202-662-0200

Applicant Information

Application No	85679728	Publication date	12/25/2012
Opposition Filing Date	03/07/2013	Opposition Period Ends	04/24/2013
Applicant	Teamtrade Inc. 2139 NE 56th Place Fort Lauderdale, FL 33308 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2000/07/05 First Use In Commerce: 2000/07/05
All goods and services in the class are opposed, namely: Aloe vera gel for therapeutic purposes


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Applicant has failed to demonstrate use of the mark in commerce (bona fide use of the mark in the ordinary course of trade) and registration should be refused under 15 U.S.C. Å§1051(a).

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	NONE

		Date	
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		
Design Mark			
Description of Mark	NONE		
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		

Attachments	77105868#TMSN.jpeg (1 page)(bytes) ALOEV - Notice of Opposition.pdf (5 pages)(68622 bytes) Exhibit A - Notice of Opposition.pdf (17 pages)(239833 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/tmv/
Name	Tara M. Vold
Date	03/07/2013

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

In the matter of Application Serial No. 85/679,728

By Teamtrade Inc. for the Mark: ALOEV

Filed on July 17, 2012, Published in the *Official Gazette* on December 25, 2012

BAYER HEALTHCARE LLC,
Opposer,

v.

TEAMTRADE INC.,
Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Bayer Healthcare LLC (“Opposer”), a Delaware limited liability company having a principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205, believes that it will be damaged by registration of the mark “ALOEV” as shown in Application Serial No. 85/679,728 for goods in International Class 5 (the “ALOEV Application”) and hereby opposes the same.

As the grounds of Opposition, Opposer alleges that:

1. Opposer has obtained the necessary extensions of time in which to oppose the challenged trademark following publication on December 25, 2012 in the *Official Gazette*.
2. Teamtrade Inc. (Owner”) filed a use-based application to register the mark “ALOEV” for “aloe vera gel for therapeutic purposes” in International Class 5 as evidenced by the publication of such mark in the *Official Gazette* on December 25, 2012.

3. Through its predecessors-in-interest, Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with products related to the treatment of pain. Opposer is the owner of, among others, an incontestable registration for the trademark “ALEVE” (United States Registration No. 1,536,042, registered April 25, 1989) for “anti-inflammatory, analgesic and antipyretic pharmaceutical preparations” in Class 5 and a registration for the trademark “ALEVE” (United States Registration No. 3,287,780, registered September 4, 2007) for “pharmaceutical antitussive-cold preparations; preparations for treating colds” in Class 5. Printouts of the registration certificates and TSDR database information for these registrations are attached hereto as Opposer's Exhibit A.

4. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods, Opposer has gained for its mark “ALEVE” a most valuable reputation and has created, in the minds of the buying public, an exclusive association between “ALEVE” and its goods.

5. Applicant’s alleged mark ALOEV is confusingly similar to Opposer’s ALEVE mark in appearance, sound, connotation, and commercial impression. Upon information and belief, Applicant’s alleged mark is alleged to be used for goods which are identical, similar and/or related to the goods in connection with which Opposer has used its “ALEVE” mark and are sold to substantially the same class of customers through the same channels of trade.

6. Priority is not an issue. Applicant filed its application for ALOEV on July 17, 2012 alleging that the mark were first used in commerce on July 7, 2000. Opposer has used the “ALEVE” mark prior to the Applicant’s application date of July 17, 2012 or any date of first use Applicant can claim.

7. Opposer filed its applications for “ALEVE” prior to Applicant’s filing date of the opposed application.

8. Use by Applicant of the alleged trademark “ALOEV” is without Opposer’s consent or permission.

9. The mark that Applicant seeks to register so resembles Opposer’s “ALEVE” mark as to be likely, when used on or in connection with Applicant’s goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Applicant’s services offered under Applicant’s Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected or associated with Opposer. Furthermore, any defect, objection or fault found with Applicant’s goods offered and sold under its “ALOEV” mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its “ALEVE” mark. Registration therefore should be refused under 15 U.S.C. § 1052(d).

10. The mark “ALEVE” is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The “ALEVE” mark became famous prior to the filing of Applicant’s application for “ALOEV.”

11. The trademark proposed for registration by Applicant, namely, “ALOEV,” is likely to cause dilution by blurring and dilution by tarnishment of Opposer’s “ALEVE” mark, and also reduces the capacity of the famous “ALEVE” mark to identify the goods of Opposer.

12. Upon information and belief, Applicant made no use of the ALOEV mark in commerce prior to the filing of the use-based application for its registration. The specimen of use submitted by Applicant in connection with the application for the mark “ALOEV” appears

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