

ESTTA Tracking number: **ESTTA1005832**

Filing date: **10/01/2019**

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	Vital Holdings LLC
Granted to Date of previous extension	10/02/2019
Address	173 E. Brannon Rd Nicholasville, KY 40356 UNITED STATES

Attorney information	WILLIAM L MONTAGUE JR. MONTAGUE LAW PLLC 163 E MAIN ST STE. 300 LEXINGTON, KY 40507 UNITED STATES will.montague@wmllex.com (859) 423-1100
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Applicant Information

Application No	88302222	Publication date	06/04/2019
Opposition Filing Date	10/01/2019	Opposition Period Ends	10/02/2019
Applicant	WellTap Inc. 2303 Titania St Austin, TX 78741 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary supplements in the form of liquid; Dietary and nutritional supplements; Herbal tinctures for medical purposes; Herbal supplements; Liquid herbal supplements; Liquid nutritional supplement; Medicinal oils
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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. Application No.	88336452	Application Date	03/12/2019
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	DWELL
Design Mark	<h1>DWELL</h1>
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Body oils; Non-medicated grooming preparations for pets, namely, cannabidiol-infused creams and lotions; Non-medicated grooming preparations in the nature of shampoos for animals; Plant and herb extracts sold as components of cosmetics; Skin creams; Skin lotions; Skin moisturizer; Cosmetic creams for skin care; Cosmetic preparations for skin care; Cosmetic preparations for skin renewal; Moisturizing preparations for the skin; Non-medicated skin care creams and lotions; Non-medicated skin care preparations; Non-medicated skin creams</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Analgesics; Anti-inflammatories; Beverages containing cannabidiol for use as a nutritional supplement; Plant extracts for medical, veterinary and pharmaceutical purposes; Plant and herb extracts sold as components of medicated cosmetics; Dietary supplemental drinks; Dietary supplements; Dietary supplements also containing cannabidiol; Dietary supplements for humans and animals; Dietary supplements for pets; Dietary and nutritional supplements; Dietary and nutritional supplements containing cannabidiol; Dietary food supplements; Dietary pet supplements in the form of pet treats; Homeopathic supplements; Medicated skin care preparations; Medicinal creams for skin care; Non-medicated additives for animal feed for use as nutritional supplements; Nutraceuticals for use as a dietary supplement; Nutritional supplements for pets</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 On-line retail store services featuring skin care products for humans and pets, food and beverage supplements for human and pet consumption, and oral care products for humans and pets; Retail store services featuring skin care products for humans and pets, food and beverage supplements for human and pet consumption, and oral care products for humans and pets</p>

U.S. Application No.	88600985	Application Date	08/31/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	D DWELL CBD HEALTH & WELLNESS		

Design Mark	D DWELL CBD HEALTH & WELLNESS
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2019/07/31 First Use In Commerce: 2019/07/31 Retail stores featuring skin creams, skin oils, dietary and nutritional supplements for humans and animals, and medicinal oils; Retail stores featuring skin creams, skin oils, dietary and nutritional supplements for humans and animals, and medicinal oils, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; Retail stores featuring medicinal oils and dietary and nutritional supplements for humans and animals containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and containing not more than trace amounts of naturally occurring cannabidiol

U.S. Application No.	88599342	Application Date	08/30/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DWELL CBD WELLNESS FOR LIFE		
Design Mark	DWELL CBD WELLNESS FOR LIFE		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2019/02/11 First Use In Commerce: 2019/08/30 skin creams; skin creams containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; skin oils; skin creams containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis Class 005. First use: First Use: 2019/02/11 First Use In Commerce: 2019/08/30 dietary and nutritional supplements for humans and animals; dietary and nutritional supplements for humans and animals containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis;		

	medicinal oils; medicinal oils containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; dietary and nutritional supplements for humans and animals containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and containing not more than trace amounts of naturally occurring cannabidiol; medicinal oils containing hemp or hemp derivatives, all of the foregoing containing hemp ingredients having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and containing not more than trace amounts of naturally occurring cannabidiol
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Attachments	88336452#TMSN.png(bytes) 88600985#TMSN.png(bytes) 88599342#TMSN.png(bytes) 2019-10-01 - Notice of Opposition.pdf(94388 bytes)
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Signature	/WILLIAM L MONTAGUE JR./
Name	WILLIAM L MONTAGUE JR.
Date	10/01/2019

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

Application Serial No:	88302222
Filed:	February 14, 2019
Published for Opposition:	June 4, 2019
Mark:	DWELL

Vital Holdings, LLC,

Opposer,

v.

Opposition No. _____

WellTap Inc.,

Applicant.

NOTICE OF OPPOSITION

Opposer, Vital Holdings, LLC (“Opposer”), a Kentucky limited liability company, believes that it will be damaged by the registration of the trademark DWELL that is the subject of Application Serial No. 88,302,222, and hereby opposes same. As grounds for opposition, Opposer alleges the following:

1. Opposer is in the business of selling hemp oil products having a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, in accordance with the 2018 Farm Bill, Agriculture Improvement Act of 2018, Pub. L. 115-334, and other applicable law.
2. Beginning at least as early as December 20, 2018, Opposer continuously has used the trademark DWELL in interstate commerce to promote and sell its hemp oil products, either through actual use or use analogous to a trademark.

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