

ESTTA Tracking number: **ESTTA1111488**

Filing date: **02/01/2021**

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	Agewell, LLC
Granted to Date of previous extension	02/03/2021
Address	9292 N. MERIDIAN ST. SUITE 211 B INDIANAPOLIS, IN 46260 UNITED STATES
Attorney information	BRADLEY M. STOHRY REICHEL STOHRY DEAN LLP 212 W. 10TH ST., SUITE A-285 INDIANAPOLIS, IN 46202 UNITED STATES Primary Email: brad@rsindy.com Secondary Email(s): docket@rsindy.com 317-501-2891
Docket Number	

Applicant Information

Application No.	88463901	Publication date	10/06/2020
Opposition Filing Date	02/01/2021	Opposition Period Ends	02/03/2021
Applicant	Age Brain, Inc. 6655 NORTHWEST 26TH WAY BOCA RATON, FL 33496 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2016/11/01 First Use In Commerce: 2016/11/01
All goods and services in the class are opposed, namely: Advertising services; business services in the nature of online retail store services featuring non-toxic health and beauty products

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3822185	Application Date	05/06/2002
-----------------------	---------	------------------	------------

Registration Date	07/20/2010	Foreign Priority Date	NONE
Word Mark	AGEWELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Cosmetic preparations, namely, hand creams and gels, skin, face and eye creams and gels</p> <p>Class 005. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Vitamins, minerals, nutritional and dietary supplements</p> <p>Class 010. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Surgical and medical apparatus and instruments, namely, electric or chemically activated heating pads and physical therapy equipment, namely, heat and cold packs for medical purposes; and hand and leg muscle exercisers for age-related sarcopenia</p> <p>Class 028. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Sporting goods equipment, namely, powered and manual exercise machines for movement of arms and legs, exercise mats</p> <p>Class 029. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Nutritional foods, namely, bars from processed vegetables</p>		

Attachments	Agewell - Notice of Opposition re AGE BRAIN LIVE SMART AGE WELL.pdf(128140 bytes)
-------------	--

Signature	/bms/
Name	BRADLEY M. STOHR
Date	02/01/2021

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

In the matter of Trademark App. Ser. Nos. 88/463,901
Filed on June 7, 2019
For the mark AGE BRAIN LIVE SMART. AGE WELL.
Published in the *Official Gazette* on October 6, 2020

Agewell, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No.: _____
)	
Age Brain, Inc.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Agewell, LLC (“Opposer”) hereby opposes the above-referenced application to register the AGE BRAIN LIVE SMART. AGE WELL. mark filed by Age Brain, Inc. (“Applicant”). The grounds for opposition are as follows:

THE PARTIES

1. Opposer is an Indiana limited liability company with a place of business at 9292 North Meridian Street, Suite 100B, Indianapolis, IN 46260.
2. Applicant is a Florida corporation with a principal place of business at 6655 Northwest 26th Way, Boca Raton, FL 33496.

OPPOSER AND ITS USE OF THE AGEWELL MARK

3. Opposer provides a variety of goods and services related to the health field.
4. Opposer is the owner of substantial trademark rights in the AGEWELL mark.
5. Opposer owns numerous trademark registrations for the AGEWELL mark, most notably, U.S. Registration No. 3,822,185 (the “AGEWELL Registration”). The AGEWELL

Registration covers cosmetic preparations, vitamins, nutritional supplements, and nutritional foods, among other goods.

6. Opposer has been using the AGEWELL mark to promote its products and services since 1992. Since that time, Opposer has established extensive and valuable goodwill in the AGEWELL mark and has spent significant amounts of time and money establishing this goodwill.

7. The AGEWELL mark has come to indicate and stand for the high-quality goods and services offered by Opposer.

8. As a result of Opposer's use of the AGEWELL mark, the AGEWELL mark has become valuable property of Opposer.

GROUND FOR AND REJECTING APPLICANT'S TRADEMARK APPLICATION

9. Trademark App. Ser. No. 88/463,901 (the "Application") was filed by Applicant for the AGE BRAIN LIVE SMART. AGE WELL. mark on June 7, 2019.

10. The Application is an intent-to-use application and covers "retail store services featuring non-toxic health and beauty products."

11. Opposer's actual, continuous, and continuing use of the AGEWELL Mark in commerce began long before Applicant filed its Application and/or began using the AGE BRAIN LIVE SMART. AGE WELL. mark.

12. The AGEWELL Registration predates the Application by over a decade.

13. Applicant's use and registration of the AGE BRAIN LIVE SMART. AGE WELL. mark for the services listed in the Application is likely to cause confusion, mistake, and/or lead to deception as to the origin of Applicant's services in violation of Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§1114 and 1125(a).

14. The likelihood of confusion is apparent in this instance because: (a) the AGE BRAIN LIVE SMART. AGE WELL. mark contains the entirety of the AGEWELL mark; and (b) Opposer's "retail store services featuring non-toxic health and beauty products" would feature products such as those described in the Registration.

15. Applicant's use and registration of the AGE BRAIN LIVE SMART. AGE WELL. mark is likely to result in confusion and substantial damage and injury to Opposer. Persons familiar with Opposer's AGEWELL mark are likely to believe that Applicant's services originate with, or are licensed, sponsored or approved by Opposer. Any such confusion would inevitably result in loss of sales to Opposer, and/or damage the goodwill and reputation that Opposer has established in the AGEWELL mark.

WHEREFORE, Opposer prays that the Application be rejected.

Dated this 1st day of February, 2021.

Respectfully submitted,

By: /Bradley M. Stohry/
Bradley M. Stohry
REICHEL STOHR Y DEAN LLP
212 West 10th Street
Suite A-285
Indianapolis, Indiana 46202
(317) 423-8820

Attorney for Agewell, LLC