

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

In the Matter of Trademark Application
Serial No. 76/418739, Published in the
Official Gazette on February 3, 2004,

BAUSCH & LOMB INCORPORATED,

Opposer,

vs.

NATIONAL VITAMIN COMPANY, INC.

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Bausch & Lomb Incorporated, a New York corporation with its principal place of business at One Bausch & Lomb Place, Rochester, New York 14604-2701, believes that it would be damaged by issuance of a registration for the trademark MACUVITE (“Applicant’s Mark”) as applied for in Application Serial No. 76/418739 (the “Application”) by National Vitamin Company, Inc. (the “Applicant”). Accordingly, Opposer, by and through its attorneys, hereby opposes the same and, as grounds for opposition, alleges as follows:

1. Opposer is engaged in the business of manufacturing, distributing, marketing and selling a wide range of ophthalmic and other eye-care products, including, but not limited to, vitamin and mineral supplements (collectively, “Opposer’s Goods”). Opposer has long been recognized by consumers as one of the leaders in this industry, and Opposer’s Goods are leading products in this industry.

2. Opposer and/or Opposer’s predecessor in interest adopted and began to use various OCUVITE-based (“Opposer’s OCUVITE Marks”) trademarks in connection with Opposer’s Goods at least as early as December, 1988. Opposer’s OCUVITE Marks have been continuously used in the United States since that time, and, through extensive sales, advertising and promotion, Opposer’s OCUVITE Marks have come to represent enormous goodwill now owned by Opposer.

08/03/2004 6THOMAS2 00000003 021427 76418739

01 FC:6402 300.00 DA



07-29-2004

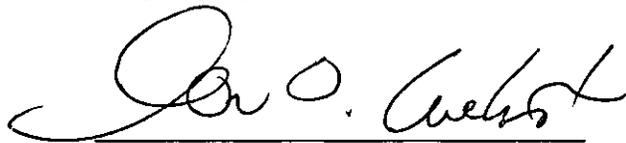
U.S. Patent & TMO/TM Mail Rpt Dt. #22

3. Opposer owns all rights, title and interest in and to Opposer's OCUVITE Marks, in the United States Patent and Trademark Office ("USPTO"). Opposer's OCUVITE Marks are valid and subsisting, and all registrations are in full force and effect in International Class 5 of the USPTO. A complete list of pending and registered OCUVITE-based trademarks owned by Opposer is attached as Exhibit A.
4. Opposer's rights in its OCUVITE Marks arose prior to any alleged rights of Applicant in Applicant's Mark.
5. Opposer's OCUVITE Marks are distinctive.
6. On June 7, 2002, Applicant filed the Application to register Applicant's Mark in the USPTO on a use basis for "ocular related dietary supplement" in International Class 5. Applicant's mark was published for opposition in the Official Gazette on February 3, 2004.
7. Opposer obtained extensions of time from the USPTO and via consent from Applicant's attorney to oppose the Application until August 1, 2004.
8. Applicant's Mark so resembles Opposer's OCUVITE Marks in sight, sound, meaning and commercial impression as to be likely, when applied to the goods named in the Application, to cause confusion, mistake or deception by causing the public to believe that the goods offered in connection with Applicant's Mark originate from, or are otherwise sponsored or endorsed by, Opposer in violation of §2(d) of the Lanham Act, 15 U.S.C. §1052(d), with consequent damage to Opposer and the public.
9. Opposer will be damaged by the registration of Applicant's Mark because such registration will support and assist Applicant in its confusing and misleading use of Applicant's Mark and in infringing Opposer's OCUVITE Marks, and because such registration will give Applicant color of right in and to Applicant's Mark, in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, it is respectfully requested this opposition be sustained and the registration sought of Applicant's Mark be denied.

A duplicate copy of this Notice of Opposition is enclosed pursuant to 37 C.F.R. §2.104(a) and TBMP §312.01. The \$300 fee required by 37 C.F.R. §2.6 may be deducted from Opposer's Deposit Account No. 02-1427.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jon O. Webster", written over a horizontal line.

Jon O. Webster
Attorney for Opposer
Bausch & Lomb Incorporated
One Bausch & Lomb Place
Rochester, New York 14604-2701
(585) 338-8905

Dated: July 29, 2004

cc: Russell F. Rowen, Esq.
Lerner & Veit, P.C.
744 Montgomery Street
5th Floor
San Francisco, CA 94111-2104
Phone: 415-781-4000

EXHIBIT A

Mark	Appl./Reg. No.	Class
OCUVITE	1556520	5
OCUVITE EXTRA	2346324	5
OCUVITE PRESERVISION	2696726	5

MT



Nº 1556520

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

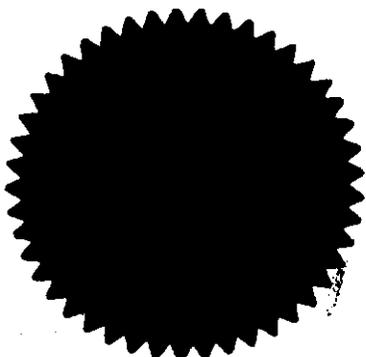
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this nineteenth day of September, 1989.

Commissioner of Patents and Trademarks

RECEIVED
SEP 29 1989

Int. Cl.: 5



Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,556,520**
Registered Sep. 19, 1989

**TRADEMARK
PRINCIPAL REGISTER**

OCUVITE

AMERICAN CYANAMID COMPANY (MAINE
CORPORATION)
ONE CYANAMID PLAZA
WAYNE, NJ 07470

FIRST USE 12-12-1988; IN COMMERCE
12-12-1988.

SER. NO. 777,352, FILED 1-30-1989.

FOR: VITAMIN/MINERAL SUPPLEMENT,
IN CLASS 5 (U.S. CL. 18).

CATHERINE MCGUFFEY, EXAMINING AT-
TORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in cursive script, appearing to read "James Profane".

Director of the United States Patent and Trademark Office

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,696,726

Registered Mar. 11, 2003

**TRADEMARK
PRINCIPAL REGISTER**

OCUVITE PRESERVISION

BAUSCH & LOMB PHARMACEUTICALS, INC.
(DELAWARE CORPORATION)
8500 HIDDEN RIVER PARKWAY
TAMPA, FL 33637

OWNER OF U.S. REG. NOS. 1,556,520, 1,615,288,
AND 2,346,324.

FOR: VITAMIN AND MINERAL SUPPLEMENTS,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-072,387, FILED 7-5-2001.

FIRST USE 12-1-2001; IN COMMERCE 12-1-2001.

LAURA KOVAISKY, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in cursive script, appearing to read "J. Towse".

Director of the United States Patent and Trademark Office

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,346,324

United States Patent and Trademark Office

Registered May 2, 2000

**TRADEMARK
PRINCIPAL REGISTER**

OCUVITE EXTRA

BAUSH & LOMB PHARMACEUTICALS, INC.
(DELAWARE CORPORATION)
8500 HIDDEN RIVER PARKWAY
TAMPA, FL 33637 , BY ASSIGNMENT; BY AS-
SIGNMENT AMERICAN CYANAMID COM-
PANY (MAINE CORPORATION) MADISON,
NJ 079400874

FOR: VITAMIN/MINERAL SUPPLEMENTS,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 3-15-1995; IN COMMERCE
3-15-1995.

OWNER OF U.S. REG. NO. 1,556,520.

SER. NO. 75-334,941, FILED 8-4-1997.

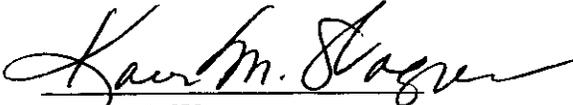
JENNIFER CHICOSKI, EXAMINING ATTOR-
NEY

TTAB

CERTIFICATE OF SERVICE

I further certify that a copy of the attached Notice of Opposition has been served this 29st day of July, 2004 by first class mail, postage prepaid, on Applicant's representative:

Russell F. Rowen, Esq.
Lerner & Veit, P.C.
744 Montgomery Street
5th Floor
San Francisco, CA 94111-2104
Phone: 415-781-4000


Karen M. Wagner

Attachment: NOTICE OF OPPOSITION

MARK: MACUVITE

cc: Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
Attn: TTAB



07-29-2004

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