



As grounds in support for this opposition, Opposer alleges the following:

1. Opposer, by duly recorded assignment, is the owner of all right, title and interest in United States Trademark Registration No. 2,438,301, registered March 27, 2001, on the Principal Register for the trademark FEMGEST (referred to as the "FEMGEST Mark"), covering the following goods:

"medicated topical transdermal creams for application to irritated or itchy skin".

(See Exhibit "A", attached hereto).

2. Opposer manufactures and markets in the United States a wide variety of medicated topical transdermal cream products under its well-known FEMGEST Mark.

3. Opposer, by duly recorded assignment, has continuously used its distinctive FEMGEST Mark since at least as early as February 15, 1997, long before Applicant's filing date or any date of first use which Applicant could rely on for the FEMSTEP Mark.

4. Opposer has been actively expanding its use of the FEMGEST Mark. Through such extensive and continuous use, Opposer has acquired a significant and valuable interest in its FEMGEST Mark and the goods offered thereunder. This interest will be injured by Applicant's use of FEMSTEP, which is confusingly similar in appearance, sound, connotation and commercial impression to Opposer's valuable FEMGEST Mark.

5. Opposer has expended considerable time, money and effort in advertising and promoting its FEMGEST Mark, its products sold under that mark, and in developing substantial and exclusive goodwill and reputation in connection with the FEMGEST Mark and the goods with which the FEMGEST Mark is used.

6. As a result of these expenditures, combined with substantial sales of quality goods under the FEMGEST Mark, the relevant consuming public has come to recognize FEMGEST as favorably distinguishing Opposer's goods from those of others.

7. On information and belief, Applicant has not yet commenced use of the FEMSTEP Mark. Remarkably, the March 31, 2004 filing date of Applicant's intent-to-use application, Serial No. 78/394,210, is more than seven (7) years after the date on which Opposer began using its FEMGEST Mark.

8. Opposer has clear priority with respect to the use and registration of FEMGEST, or any mark confusingly similar thereto, in connection with medicated topical creams and related goods and products.

9. The dominant portion of Applicant's mark is confusingly similar in appearance, sound, connotation and commercial impression to the dominant portion of Opposer's FEMGEST Mark.

10. Applicant seeks to register a mark that is confusingly similar to Opposer's FEMGEST Mark and will be used in connection with goods which are substantially identical or similar to those goods sold under Opposer's FEMGEST Mark.

11. Applicant's goods sold under its FEMSTEP Mark will be offered through the same or similar channels of trade and to the same or similar class of consumers as Opposer's goods.

12. Applicant's use and registration of FEMSTEP in connection with pharmaceuticals and oral contraceptive products will cause Opposer injury because such use is likely to cause confusion and/or mistake by wrongly leading consumers to believe that such Applicant's goods are provided by, sponsored by, or somehow associated with Opposer.

13. These consumers, upon purchasing, using or otherwise receiving Applicant's goods bearing the FEMSTEP Mark, are likely to be confused and deceived and are likely to believe in the existence of some association between the Applicant or Applicant's goods and Opposer, all to the injury of Opposer's FEMGEST Mark.

14. Applicant's use and registration of the FEMSTEP Mark will dilute the distinctive quality of and diminish or detract from the prior rights firmly established by Opposer in and to the FEMGEST Mark.

15. A duplicate copy of this Notice of Opposition, with exhibits, and a filing fee of \$300.00, is enclosed herewith. Please charge any additional fees to Deposit Account No. 501844 and direct all correspondence in connection with this opposition to the undersigned.

**WHEREFORE**, refusal of the registration applied for by Application Serial No. 78/394,210 is respectfully submitted to be in order and hereby requested.

Dated: March 18, 2005  
Garden City, New York

Respectfully submitted,

VITAMIN WORLD, INC.

By:

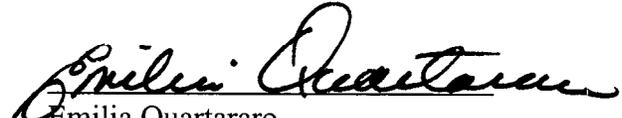


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Attorneys for Opposer, Vitamin World, Inc.

**CERTIFICATE OF MAILING**

I hereby certify that the foregoing **NOTICE OF OPPOSITION** is being deposited with the U.S. Postal Service as Express Mail No. EL 401961969US addressed to: Box TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA. 22313-1451, on March 18, 2005.

  
Emilia Quartararo





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### Typed Drawing

<b>Word Mark</b>	FEMGEST
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: MEDICATED TOPICAL TRANSDERMAL CREAMS FOR APPLICATION TO IRRITATED OR ITCHY SKIN. FIRST USE: 19970215. FIRST USE IN COMMERCE: 19970215
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75869994
<b>Filing Date</b>	December 13, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	January 2, 2001
<b>Registration Number</b>	2438301
<b>Registration Date</b>	March 27, 2001
<b>Owner</b>	(REGISTRANT) BIO-NUTRITIONAL FORMULAS, INC. CORPORATION NEW YORK 106 East Jericho Turnpike Mineola NEW YORK 11501  (LAST LISTED OWNER) VITAMIN WORLD, INC. CORPORATION DELAWARE 90 ORVILLE DRIVE BOHEMIA NEW YORK 11716
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED

Attorney of Record      OLGA GANZALEZ  
Type of Mark        TRADEMARK  
Register            PRINCIPAL  
Live/Dead Indicator      LIVE

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**Serial Number:** 75869994 Assignment Information

**Registration Number:** 2438301 Assignment Information

**Mark (words only):** FEMGEST

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2001-03-27

**Filing Date:** 1999-12-13

**Transformed into a National Application:** No

**Registration Date:** 2001-03-27

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

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**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2001-04-18

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

1. VITAMIN WORLD, INC.

**Address:**

VITAMIN WORLD, INC.  
90 ORVILLE DRIVE  
BOHEMIA, NY 11716  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

**International Class:** 005

MEDICATED TOPICAL TRANSDERMAL CREAMS FOR APPLICATION TO IRRITATED OR ITCHY SKIN

**First Use Date:** 1997-02-15

**First Use in Commerce Date:** 1997-02-15

**Basis:** 1(a)

**ADDITIONAL INFORMATION**

(NOT AVAILABLE)

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

- 2001-03-27 - Registered - Principal Register
- 2001-01-02 - Published for opposition
- 2000-12-01 - Notice of publication
- 2000-08-03 - Approved for Pub - Principal Register (Initial exam)
- 2000-07-26 - Examiner's amendment mailed
- 2000-07-21 - Case file assigned to examining attorney
- 2000-03-27 - Applicant amendment prior to exam entered

**CORRESPONDENCE INFORMATION**

**Correspondent**

OLGA GANZALEZ (Attorney of record)

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## Trademark Assignment Abstract of Title

**Total Assignments: 1**
**Serial #:** 75869994**Filing Dt:** 12/13/1999**Reg #:** 2438301**Reg. Dt:** 03/27/2001**Registrant:** BIO-NUTRITIONAL FORMULAS, INC.**Mark:** FEMGEST
**Assignment: 1**
**Reel/Frame:** 3030/0104**Received:** 02/15/2005**Recorded:** 02/15/2005**Pages:** 7**Conveyance:** MERGER**Assignors:** NUTRITION WAREHOUSE ACQUISITION CORP.**Exec Dt:** 11/15/2001**Entity Type:** CORPORATION**Citizenship:** DELAWARE

BIO-NUTRITIONAL FORMULAS, INC.

**Exec Dt:** 01/03/2000**Entity Type:** CORPORATION**Citizenship:** NEW YORK**Assignee:** VITAMIN WORLD, INC.

90 ORVILLE DRIVE

BOHEMIA, NEW YORK 11716

**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Correspondent:** PATRICIA M. JOHNSON

90 ORVILLE DRIVE

BOHEMIA, NY 11716

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