

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

In the Matter of Application

YOPLAIT MARQUES INTERNATIONALES	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
NUTRI/SYSTEM IPHC, INC.	)	Serial No. 78/975262
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
Attn: TTAB  
P.O. Box 1451  
Alexandria, VA 22313-1451

In the matter of Application Serial No. 78/975262 (“the Application”) to register NOURISH (“the Mark”) in International Classes 29, 30 and 44 by Nutri/System IPHC, Inc., (“Applicant”), which was filed on August 21, 2003, and published in the February 22, 2005 *Official Gazette*, Yoplait Marques Internationales, a French corporation, having a principal place of business in Paris, France, (“Opposer”), believes it would be damaged by the registration of the Mark and therefore opposes on the following grounds:

1. Applicant seeks to register the Mark in connection with “breakfast, lunch and dinner entrees, and snacks containing meat, fish and poultry, eggs, milk and milk products, namely cream cheese spread, cheese spread, cottage cheese, sour cream, dried and cooked fruits and vegetables, jellies, sauces, namely applesauce, snack dips and soups, protein based nutrient-dense snack bars, yogurts” in Class 29 and “milkshakes, puddings, breakfast, lunch and dinner entrees, snacks and desserts, namely cereals, cereal bars, namely ready to eat cereal derived food

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bars, muffins, breads, dessert bars, namely brownies, coffee flavored dessert bars, chocolate crunch bars, peanut butter, caramel and mint chewy chocolate bars, fruit bars, rice, sauces, namely salsas and tomato sauces, gravies, salad dressing, frozen bars and ices, namely fudge bars, creamsicles and ice pops, food beverages with a coffee, tea and coca base, namely, coffee based beverages containing milk, cocoa based beverages containing milk, iced teas” in Class 30.

2. As is set forth below, Opposer’s registration NOURICHE (the “Opposer’s Mark”) predates Applicant’s application and establish Opposer’s priority over Applicant’s Mark.

3. Opposer is the owner of the following registration:

- NOURICHE, Registration No. 2643955 in Classes 5 and 29 covering “meal replacement and dietary supplement drinks” and “dairy products excluding ice cream, ice milk and frozen yogurt.”

4. In its application, Applicant also seeks registration for “providing treatment and consultation for weight reduction, obesity and weight management, nutrition and exercise namely through the telephone, television, global internet, literature and video tape” in Class 44; however, there is no limitation on the channels of trade or intended purpose or field of use of the goods in Classes 29 or 30.

5. The similarity and/or close relationship of Applicant’s goods and services to Opposer’s goods and services under their respective marks likely will result in confusion as to the source, sponsorship or affiliation of the parties’ respective goods and services.

6. Because of the similarity and/or related nature of the parties’ respective goods and services, the Mark covered by the Application so resembles Opposer’s Mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

7. Based upon the foregoing, the registration of the Mark depicted in Application Serial No. 78/975262 will cause injury and damage to Opposer.

WHEREFORE, Opposer prays that the Application Serial No. 78/975262 be rejected, and that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Please charge the statutory filing fee of \$600.00 to our Deposit Account No. 501-649. If this amount is insufficient for any reason, please charge any shortfall, missing or excess fees to our Deposit Account No. 501-649.

YOPLAIT MARQUES INTERNATIONALES

  
\_\_\_\_\_  
One of its Attorneys

Dated: August 19, 2005

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**CERTIFICATE OF FILING**

I hereby certify that the Yoplait Marques Internationale's Notice of Opposition was deposited via United States Postal Service, Express Mail, No. EV066801775US to:

Assistant Commissioner for Trademarks  
Attention: TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

this 19<sup>th</sup> day of August 2005.

*Lerie Bechtold*