

ESTTA Tracking number: **ESTTA124306**

Filing date: **02/09/2007**

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	Omni Vitamin & Nutrition Corp.		
Entity	Corporation	Citizenship	Delaware
Address	90 Orville Drive Bohemia, NY 11716 UNITED STATES		

Attorney information	Scott B. Fisher Jaspan Schlesinger Hoffman LLP 300 Garden City Plaza Garden City, NY 11530 UNITED STATES sfisher@jshllp.com, khirasawa@jshllp.com Phone:516-746-8000		
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Applicant Information

Application No	78969590	Publication date	01/16/2007
Opposition Filing Date	02/09/2007	Opposition Period Ends	02/15/2007
Applicant	BriteAge Corporation 701 Palomar Airport Road, Third Floor Carlsbad, CA 92011 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements
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Attachments	DOCSOPEN- #532193-v1-Omni_Vitamin_opposition_NUTRI-MEGA_V__NUTRIOMEGA_3.pdf (5 pages)(15279 bytes) Nutri-mega.pdf (2 pages)(41353 bytes)
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Signature	/scott b. fisher/
Name	Scott B. Fisher
Date	02/09/2007

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

In the Matter of Trademark Application

Applicant : BriteAge Corporation
Serial No. : 78/969,590
Filed : September 7, 2006
Mark : NUTRIOMEGA 3
Int'l Class : 5
For : Nutritional supplements
Published : January 16, 2007

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Omni Vitamin & Nutrition Corp., :
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: Opposer, :
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: vs. : Opposition No.: _____
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BriteAge Corporation, :
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: Applicant. :
:
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Opposer, Omni Vitamin & Nutrition Corp. (the "Opposer" or "Omni Vitamin"), is a Delaware corporation with a principal place of business at 90 Orville Drive, Bohemia, New York 11716.

Omni Vitamin believes that it will be damaged by the registration of NUTRIOMEGA 3 covering "Nutritional supplements" in International Class 5 (the "NUTRIOMEGA 3 Mark" or the "Applicant's Mark"), by applicant, BriteAge Corporation

("Applicant" or "BriteAge"), a California corporation having a principal place of business at 701 Palomar Airport Road, Third Floor, Carlsbad, California 92011, and hereby opposes the same.

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. 1,030,543, registered January 20, 1976, on the Principal Register for the trademark NUTRI-MEGA (the "NUTRI-MEGA Mark"), covering the following goods:

"Vitamins" in International Class 05.

Affidavits under Sections 8 and 9 of the Trademark Act (15 U.S.C. § 1065) were filed, accepted and acknowledged by the United States Patent and Trademark Office and the NUTRI-MEGA Mark has been timely renewed. Furthermore, Opposer's NUTRI-MEGA Mark has acquired distinctiveness as a result of its continuous and exclusive use since at least January 31, 1975. Therefore, Opposer's right to use the NUTRI-MEGA Mark on said goods is incontestable. (See Exhibit "A")

2. Opposer manufactures and markets in the United States, and beyond, vitamins and other goods and products under its well-known NUTRI-MEGA Mark.

3. Opposer has been actively expanding its use of its NUTRI-MEGA Mark. Through such extensive and continuous use, Opposer has acquired significant and valuable interest in the NUTRI-MEGA Mark. This interest will be injured by Applicant's use of the NUTRIOMEGA 3 Mark, which is substantially similar to Opposer's valuable NUTRI-MEGA Mark and confusingly similar in appearance, sound, connotation, and

commercial impression to Opposer's valuable NUTRI-MEGA Mark.

4. Opposer has continuously used its distinctive NUTRI-MEGA Mark since at least as early as January 31, 1975, which is more than thirty-one (31) years before the Applicant filed its intent to use application for the proposed NUTRIOMEGA 3 Mark.

5. Opposer has been actively using the NUTRI-MEGA Mark. Through such extensive and continuous use, Opposer has acquired significant and valuable interest in the NUTRI-MEGA Mark and the goods offered thereunder. These interests will be injured by Applicant's use of the NUTRIOMEGA 3 Mark, which is confusingly, substantially similar in appearance, sound, connotation, and commercial impression to Opposer's valuable NUTRI-MEGA Mark.

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

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

8. Opposer has clear priority with respect to the use and registration of NUTRI-MEGA, or any mark confusingly similar thereto, in connection with vitamins and other goods and services.

9. The dominant portion of Applicant's NUTRIOMEGA 3 Mark is confusingly similar in appearance, sound, spelling, connotation and commercial impression to the

dominant portion of Opposer's NUTRI-MEGA Mark.

10. Applicant seeks to register a mark that is confusingly similar to Opposer's NUTRI-MEGA Mark, and will be used in connection with goods which are substantially similar to those goods sold under the NUTRI-MEGA Mark.

11. Applicant's goods that are or may be sold under its NUTRIOMEGA 3 Mark are or 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 the NUTRIOMEGA 3 Mark will cause Opposer injury because such use is likely to cause confusion or mistake, or both, by wrongly leading consumers to believe that Opposer provides, or somehow is associated with, Applicant's goods, products and services.

13. These consumers, upon purchasing, using or otherwise receiving Applicant's goods, products and services bearing the NUTRIOMEGA 3 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 NUTRI-MEGA Mark.

14. Applicant's use and registration of the NUTRIOMEGA 3 Mark will dilute the distinctive quality of and diminish or detract from the prior rights firmly established by Opposer in and to the NUTRI-MEGA Mark.

15. Please charge any additional fees to Deposit Account No. 501,844 and direct all correspondence in connection with this opposition to the undersigned.

WHEREFORE, refusal of the registration applied for by Application Serial No. 78/969,590 is respectfully submitted to be in order and is hereby requested.

Dated: February 9, 2007
Garden City, New York

Respectfully submitted,

Omni Vitamin & Nutrition Corp.

By:

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Attorneys for Opposer
Omni Vitamin & Nutrition Corp.

532193/049095



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Typed Drawing

Word Mark	NUTRI-MEGA
Goods and Services	IC 005. US 018. G & S: VITAMINS. FIRST USE: 19750131. FIRST USE IN COMMERCE: 19750131
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73055013
Filing Date	June 13, 1975
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	1030543
Registration Date	January 20, 1976
Owner	(REGISTRANT) ARCHON PURE PRODUCTS CORPORATION CORPORATION CALIFORNIA 345 N. BALDWIN PARK BLVD. CITY OF INDUSTRY CALIFORNIA 91746 (LAST LISTED OWNER) OMNI VITAMIN AND NUTRITION CORP. CORPORATION ASSIGNEE OF DELAWARE 90 ORVILLE DRIVE BOHEMIA NEW YORK 11716
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	IRENE B. FISHER
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060515.
Renewal	2ND RENEWAL 20060515
Live/Dead Indicator	LIVE

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