

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

In the matter of the Application Serial No. 78/971771
Published in the *Official Gazette* on May 15, 2007
Trademark: **ESTROVIVE**
Opposition No. 91177804

Attn: Elizabeth Winter

<p>Amerifit, Inc.</p> <p style="text-align: center;">Opposer</p> <p style="text-align: center;">v.</p> <p>George K. Zoorob,</p> <p style="text-align: center;">Applicant</p>	<p>APPLICANT'S RESPONSE TO OPPOSITION</p>
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ANSWER TO OPPOSITION

In the matter of the opposition filed towards the registration of the mark ESTROVIVE for "vitamins and dietary supplements" in International Class 5, Serial No. 78/971771, filed September 11, 2006 and published for opposition in the Official Gazette on May 15, 2007 by the Opposer, AMERIFIT, INC., the applicant, George K. Zoorob does not believe that would damage the Opposer, AMERIFIT, INC.

Applicant's answer to the grounds for the opposition:

1. Applicant agrees.
2. Applicant agrees.
3.
 - i. Applicant neither denies nor agrees.
 - ii. Applicant neither denies nor agrees.
 - iii. Applicant neither denies nor agrees.
 - iv. Applicant neither denies nor agrees.
 - v. Applicant neither denies nor agrees.
4. Applicant agrees.
5. Applicant neither agrees nor denies.

6. Applicant disagrees. The mark ESTROVIVE is a dietary supplement that is made from all natural essential oils. However, the opposer's mark ESTROVEN is not. Even though those marks are all intended to be sold under the same class of goods, International class 5, they are entirely different products.
7. Applicant denies that the Opposer's mark ESTROVEN and the Applicant's mark ESTROVIVE are confusingly similar. There is no similarity or closeness what so ever between ESTROVIVE and ESTROVEN in spelling, sound or pronunciation. In addition, there is no similarity in packaging or ingredients. The mark ESTROVIVE was applied for to establish a name branding and product line. Other product names already applied for to go with the name branding include MUSCLEVIVE, NATUREVIVE, HERBAVIVE, MENSTRAVIVE, HERBALVIVE, INTESTAVIVE, and RESPRAVIVE. We are a private label company and we try to accommodate our clients with a name branding that is specifically designed for that specific client. In this case we are trying to have name branding around the word "VIVE. The applicant believes that registration of ESTROVIVE will not cause confusion, mistake or deception as to source or sponsorship of the goods set forth therein.
8. Applicant denies that the marketing of the mark ESTROVIVE will give rise to confusion, mistake or deception as to source, sponsorship or endorsement. The Opposer's mark is ESTROVEN is a supplement made with isoflavonoids. The applicant's mark ESTROVIVE is made with all natural essential oils. These two products are completely different.
9. Applicant does not believe that if granted registration of the mark ESTROVIVE that it would be a source of damage or injury to the Opposer. In addition, the Opposer did not submit any evidence or real documents showing confusion or damage.
10. Applicant agree that the marks ESTROVIVE was first used at least as early as 08/01/2007, and the first used in commerce at least as early as 05/01/2003, as a part of our private label portfolio.
11. Applicant does not agree with the Opposer's assumption that the Applicant's mark was first used in August 1, 2001, and was not first used in commerce at least as early as May 1, 2003, and was not in use in commerce at the time the application was filed. Applicant does not agree with the opposer's unfound assumptions and unsupported accusations. As a matter of fact Mr. Martin, President of Amerifit, Inc. took samples of our products with when he visited Colorado Springs, Co in late 2002 and early 2003.
12. Applicant disagrees with the Opposer that there has been no bona fide use of the ESTROVIVE mark in connection with the goods set forth in the application. All of the Opposer's statements are unfounded and unsupported.

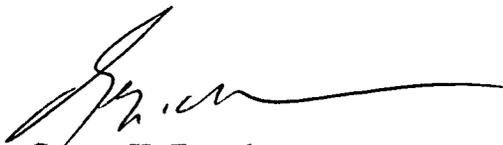
There some important facts that the Opposer, Amerifit, neglected to include in their opposition. Mr. Martin Herman, president of Amerifit suggested this name, along with other names, at a dinner with the Applicant years ago here in Colorado Springs while visiting the applicant. Mr. Herman shared with the Applicant that they arrived to the name ESTROVEN by using focus group sessions. He recommended us to use focus groups to evaluate future names. We supplied Mr. Herman with samples of our products, which included products for menstrual cramps, muscle and joint discomfort, and menopause. He was so impressed he later on, in early 2003, he applied for a job at our company. In fact, Mr. Herman has contacted the applicant recently in the past two months.

The Applicant took into consideration before filing the ESTROVIVE mark if it resembled the mark ESTROVEN, and after proper research and several opinions, came to the decision it did not have any resemblance in sound, spelling, pronunciation, packaging or ingredients. It is not the Applicant's intention to dilute ESTROVEN; it is just a name branding procedure.

In conclusion the applicant feels that the USPTO examining attorney, David Sterkin, would not have even allowed this mark to be published if there was a likelihood of confusion with ESTROVEN.

The Applicant prays that this opposition be dismissed and the applicant be granted the registration for the ESTROVIVE mark.

Respectfully submitted,



George K. Zoorob
Applicant

Date: July 18, 2007

1111 East Fillmore Street
Colorado Springs, CO 80907
719-964-4367

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing APPLICANT'S RESPONSE TO THE
OPPOSITION #91177804 was sent by First Class Mail on July 18, 2007 to George A.
Pelletier, Jr. at the following address:

Cantor Colburn LLP
55 Griffin Road South
Bloomfield CT 06002



George K. Zoorob

7/18/07

Date