

ESTTA Tracking number: **ESTTA160386**

Filing date: **09/04/2007**

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	Walgreen Co.		
Entity	Corporation	Citizenship	Illinois
Address	200 Wilmot Rd. Deerfield, IL 60015 UNITED STATES		

Attorney information	Mark A. Niede Leydig, Voit & Mayer, Ltd. Two Prudential Plaza Suite 4900 Chicago, IL 60601 UNITED STATES mniede@leydig.com Phone:322-606-5600
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Applicant Information

Application No	77179411	Publication date	08/21/2007
Opposition Filing Date	09/04/2007	Opposition Period Ends	09/20/2007
Applicant	SYLMARK HOLDINGS LIMITED 17 EARLSFORT TERRACE DUBLIN 2, IRELAND		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2096551	Application Date	12/19/1995
Registration Date	09/16/1997	Foreign Priority Date	NONE
Word Mark	WALGREENS		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 003. First use: First Use: 1974/10/06 First Use In Commerce: 1974/10/06 aftershave lotion, all-purpose cleaners, aloe vera skin moisturizer, baby oil, baby powder, baby shampoo, bath powder, bath oils, non-medicated bath salts, carpet deodorizer, cotton squares for cosmetic purposes, cotton swabs for personal use, denture cleanser, deodorant (personal) and antiperspirant, fabric softener, facial cleansing sponges, glass cleaner, hair gel, hair shampoo, hair spray, laundry detergent, nail polish remover, scouring powder, shaving creams and lotions, skin creme, skin lotions, skin moisturizers, starch (laundry), suntan lotion, and toothpaste</p> <p>Class 005. First use: First Use: 1974/12/11 First Use In Commerce: 1974/12/11 acne medications, allergy medicine, antiseptics and general purpose germicides, antacids, antibiotic cream, antifungal powder, antihistamine, anti-plaque rinse antiseptic, athlete's foot preparations, namely, powder, spray and cream for antiseptic purposes, powder, boric acid powder, camphor spirit for antiseptic purposes, cold capsules, cough drops, cream pain reliever, dandruff shampoo, day and night cold medicine, decongestant tablets, diarrhea medication, disinfectant spray, douches, enema preparations, eye drops, feminine sanitary pads, napkins, tampons and pantliners, flu medicine, glycerin suppositories, hemorrhoid suppositories, hydrocortisone cream, hydrogen peroxide for medical use, insect repellents and insecticides, iodine, ipecac syrup to induce vomiting and aid in the treatment of poisoning, laxatives, lip balm with sunscreen, lubricating jelly for medical purposes, magnesium citrate and mineral oil for use as laxatives, mouthwash, multi-antibiotic cream, nasal spray preparations, oral antiseptic, pain relievers, namely, aspirin and non aspirin, pediatric electrolyte, rubbing alcohol, saline solution, sanitary toilet seat covers, sinus tablets, sore throat lozenges, tincture iodine, vaginal cream, vitamin A and D ointment, vitamin supplements, witchhazel and zinc oxide</p> <p>Class 008. First use: First Use: 1974/03/28 First Use In Commerce: 1974/03/28 razor blades, razors (non-electric), and tableware, namely plastic knives, forks, and spoons</p> <p>Class 009. First use: First Use: 1974/12/00 First Use In Commerce: 1974/12/00 batteries and unexposed camera film</p> <p>Class 010. First use: First Use: 1979/02/18 First Use In Commerce: 1979/02/18 dental floss, disposable bottles for feeding, droppers for administering medications (sold empty), enema apparatus, heating pads and ice bags and thermometers for medical purposes</p> <p>Class 011. First use: First Use: 1974/10/06 First Use In Commerce: 1974/10/06 air freshener dispensing units for rooms, hot water bottles, and light bulbs</p> <p>Class 016. First use: First Use: 1982/09/02 First Use In Commerce: 1982/09/02 coffee filters, diapers (disposable), facial tissue, paper napkins, photo albums, plastic sandwich/food storage bags, and plastic trash bags</p> <p>Class 021. First use: First Use: 1980/02/00 First Use In Commerce: 1980/02/00 cotton balls, cotton squares, rubber gloves, paper plates, plastic cups, pre-moistened towelettes for cleaning and non-electric toothbrushes</p> <p>Class 025. First use: First Use: 1977/07/00 First Use In Commerce: 1977/07/00 [caps,] inner soles, hosiery [, sweatshirts, and T-shirts]</p> <p>Class 029. First use: First Use: 1982/09/05 First Use In Commerce: 1982/09/05 roasted peanuts, unsalted peanuts, and cashews</p> <p>Class 030. First use: First Use: 1977/07/00 First Use In Commerce: 1977/07/00 candy, honey roasted peanuts, and ice cream</p> <p>Class 042. First use: First Use: 1900/12/31 First Use In Commerce: 1900/12/31 pharmacy and retail store services</p>
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U.S. Registration No.	2876500	Application Date	04/25/2003
Registration Date	08/24/2004	Foreign Priority Date	NONE
Word Mark	WALGREENS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1992/04/01 First Use In Commerce: 1992/04/01 pharmacy, retail drug store and general merchandise store services		

U.S. Registration No.	2292545	Application Date	08/19/1998
Registration Date	11/16/1999	Foreign Priority Date	NONE
Word Mark	WALGREENS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1951/04/00 First Use In Commerce: 1951/04/00 Retail pharmacy, retail drug store, and general merchandise store services		

Attachments	76509639#TMSN.gif (1 page)(bytes) 75538969#TMSN.gif (1 page)(bytes) CALGREENS Notice of Opposition.pdf (5 pages)(153432 bytes)
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Signature	/Mark A. Niede/
Name	Mark A. Niede
Date	09/04/2007

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

WALGREEN CO.,)
)
 Opposer,)
) Serial No. 77/179411
 v.)
) Opposition No.
 SYLMARK HOLDINGS LIMITED)
)
 Applicant.)

NOTICE OF OPPOSITION

In the matter of Application Serial No. 77/179411 for registration of the mark CALGREENS in International Class 5 by Sylmark Holdings Limited, an Irish Corporation, which application was published in the Official Gazette on August 21, 2007, Walgreen Co., an Illinois corporation, located and doing business at 200 Wilmot Road, Deerfield, Illinois 60015 (hereinafter referred to as “Opposer”), believes it will be damaged by registration of this mark and therefore opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant seeks to register the mark CALGREENS on the Principal Register for “nutritional supplements” in Class 5 as evidenced by the publication of the mark in the August 21, 2007 issue of the Official Gazette.
2. Opposer adopted and has continuously been using the mark WALGREENS in commerce since at least as early as December 1900 for pharmacy and retail store services and owns United States Reg. No. 2096551, registered September 16, 1997, for said mark. As further identified in that Registration, Opposer has adopted and continuously used the WALGREENS mark since 1974 on a number of other products,

including such diverse items as acne medications, allergy medicines, antiseptics, antacids, antihistamines, cold capsules, cough drops, day and night cold medicine, decongestant tablets, diarrhea medications, laxatives, lip balms, mouthwash, multi-antibiotic cream, pain relievers, namely, aspirin and non aspirin, sinus tablets, sore throat lozenges, vitamin supplements, zinc oxide, aftershave, skin moisturizers, baby oil, baby powder, baby shampoo, bath powder, bath oils, deodorant and antiperspirant, hair gels, shampoo and spray, shaving creams and lotions, skin creme, skin lotions, skin moisturizers, suntan lotion, and toothpaste. Opposer also owns United States Reg. No. 2876500 for the mark WALGREENS and Design; United States Reg. No. 2876500 for retail pharmacy, retail drug store and general merchandise store services and United States Reg. No. 2292545 for retail pharmacy, retail drug store and general merchandise store services, among others.

3. Opposer's goods and services offered under the WALGREENS mark, including such items as those listed above and including vitamin supplements, are and have been extensively advertised and promoted throughout the United States. Opposer has spent significant sums to advertise and promote its goods and services under its WALGREENS mark, and there is substantial goodwill associated with this mark. Opposers' longstanding use of the WALGREENS mark, together with its substantial sales and extensive advertising efforts associated with the mark, have served to make the mark famous among relevant consumers.

4. The mark WALGREENS has come to be widely known, recognized, and respected among the public and in the business community as indicating goods originating exclusively from Opposer.

5. Applicant's CALGREENS mark is virtually identical to Opposer's WALGREENS mark.
6. Applicant's mark identifies nutritional supplements in Class 5, goods which are virtually identical to—if not directly competitive to—the vitamin supplements identified in Opposer's Registration Number 2096551.
7. As a retail pharmacy, drug store and general merchandiser, Opposer regularly sells nutritional supplements, thus there is an overlap of consumers who are likely to be confused as to the source of Applicant's goods.
8. Applicant's nutritional supplements will likely be directed to consumers familiar with Opposer's WALGREENS mark and its goods and services, including vitamin supplements and other such related and competitive goods, causing consumer confusion as to the source of Applicant's goods.
9. Due to the confusing similarity of the parties' respective marks, the virtual identity of the parties' goods and the overlapping of relevant consumers, confusion is likely.
10. If Applicant obtains a registration for the subject mark, Opposer is likely to be damaged in that the *prima facie* effect of such registration will tend to cause confusion and thus impair Opposer's rights to use its WALGREENS mark in connection with its goods.
11. By reason of all the foregoing, Opposer will be significantly damaged by the registration of the Applicant's mark.
12. In the alternative, due to the similar nature of Applicant's proposed CALGREENS mark and Opposer's distinctive and famous WALGREENS mark,

registration of Applicant's mark would cause dilution of the distinctive quality of Opposer's WALGREENS mark and, therefore, registration should be refused pursuant to the Anti-Dilution statute, 15. U.S.C. 1052(c).

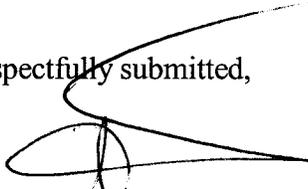
13. In view of the above, Applicant is not entitled to federal registration of the mark CALGREENS, Serial No. 77/179411.

WHEREFORE, Walgreen Co., by its attorneys, respectfully requests that the Notice of Opposition be sustained and that registration of the mark CALGREENS, Serial No. 77/179411, be refused.

Please charge the filing fee of \$300, and any deficiencies, to USPTO deposit account No. 12-1216. Enclosed is a duplicate copy of the Notice of Opposition.

Respectfully submitted,

Date: Sept 4, 2007

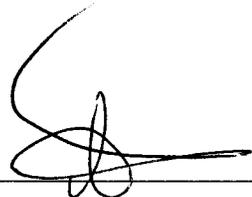
By: 

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CERTIFICATE OF MAILING

This Notice of Opposition is being filed electronically pursuant to the ESTTA system. The fee of \$300 required in §2.6(a)(17) is enclosed. The Commissioner is authorized to charge payment of any additional fees associated with this filing or credit any overpayment to Deposit Account .

Dated: Sept. 4, 2007



A handwritten signature in black ink, consisting of a large, stylized 'S' shape followed by a horizontal line extending to the right. The signature is positioned above a solid horizontal line that serves as a baseline for the signature.