

ESTTA Tracking number: **ESTTA194675**

Filing date: **02/25/2008**

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	New Albertson's, Inc.
Granted to Date of previous extension	02/24/2008
Address	250 E. Parkcenter Blvd. Boise, ID 83706 UNITED STATES

Attorney information	Kevin M. Hayes Klarquist Sparkman, LLP 121 SW Salmon Street One World Trade Center, Suite 1600 Portland, OR 97204 UNITED STATES kevin.hayes@klarquist.com, heidi.vanbaalen@klarquist.com, lisa.caldwell@klarquist.com, ptoetmdocket@klarquist.com Phone:(503) 595-5300
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**Applicant Information**

Application No	77115775	Publication date	08/28/2007
Opposition Filing Date	02/25/2008	Opposition Period Ends	02/24/2008
Applicant	S & G Properties, LLC d/b/a LuckyVitamin.com 18 West Mount Kirk Avenue Norristown, PA 19403 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2004/08/00 First Use In Commerce: 2004/08/00 All goods and services in the class are opposed, namely: On-line retail store services featuring vitamins, food supplements, mineral supplements, herbal supplements, homeopathic supplements, nutritional supplements, appetite suppressants, meal replacement shakes, nutritional bars, cosmetics, soap, shampoo, aromatherapy creams and candles, sunscreen, nonmedicated ointments, non-medicated bath preparations, massage oils, air deodorizer, non-medicated grooming preparations for dogs and cats, health food, water purifiers and filters, tea
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1543066	Application Date	08/22/1988
Registration Date	06/06/1989	Foreign Priority	NONE

		Date	
Word Mark	LUCKY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/06/05 First Use In Commerce: 1988/06/05 SUPERMARKET AND GROCERY STORE SERVICES		

U.S. Registration No.	2193052	Application Date	10/21/1996
Registration Date	10/06/1998	Foreign Priority Date	NONE
Word Mark	LUCKY MEANS LOW PRICES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/05/10 First Use In Commerce: 1995/05/10 retail supermarket and general merchandise store services		

Attachments	73747759#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.PDF ( 5 pages )(203288 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kevin M. Hayes/
Name	Kevin M. Hayes
Date	02/25/2008



shakes, nutritional bars, cosmetics, soap, shampoo, aromatherapy creams and candles, sunscreen, nonmedicated ointments, non-medicated bath preparations, massage oils, air deodorizer, non-medicated grooming preparations for dogs and cats, health food, water purifiers and filters, and tea in International Class 035 and hereby opposes registration of the same.

The grounds for the opposition are as follows:

1. Opposer owns the following United States Principal Register Trademark

Registrations for LUCKY and/or marks incorporating LUCKY:

<b>Reg. No.</b>	<b>Mark</b>	<b>Registration Date</b>	<b>Goods/Services</b>
1,543,066	LUCKY (Stylized)	June 6, 1989	Supermarket and grocery store services
2,193,052	LUCKY MEANS LOW PRICES	October 6, 1998	Retail supermarket and general merchandise stores services

2. Opposer, itself and/or through predecessors and/or licensees, adopted and used the mark LUCKY for retail grocery store and supermarket services as well as the mark LUCKY MEANS LOW PRICES for the services listed in the table above long before the February 26, 2007, filing date of the opposed application. Opposer has not abandoned the marks LUCKY or LUCKY MEANS LOW PRICES for the services listed in the registrations cited above.

3. The purchasing public has come to know, rely upon, and associate Opposer's LUCKY mark with Opposer and to recognize Opposer's retail supermarket and grocery store and related services by Opposer's LUCKY mark. Opposer has established valuable goodwill in Opposer's LUCKY mark.

4. The opposed application identifies: on-line retail store services featuring vitamins, food supplements, mineral supplements, herbal supplements, homeopathic supplements, nutritional supplements, appetite suppressants, meal replacement shakes, nutritional bars, cosmetics, soap, shampoo, aromatherapy creams and candles, sunscreen, nonmedicated

ointments, non-medicated bath preparations, massage oils, air deodorizer, non-medicated grooming preparations for dogs and cats, health food, water purifiers and filters, and tea.

5. Retail grocery stores and supermarkets sell the same goods as those identified by the applicant that it plans to sell under the service mark of the opposed application.

6. Retail grocery stores and supermarkets commonly have an associated on-line retail store.

7. The services of the opposed application are related and/or similar to grocery store and supermarket retail services.

8. The mark of the opposed application incorporates Opposer's mark LUCKY in its entirety.

9. The VITAMIN.COM portion of the mark of the opposed application is generic and/or merely descriptive.

10. The LUCKY portion of the mark of the opposed application is the dominant portion of such mark.

11. The word LUCKY in the mark of the opposed application is the first word of the mark and the word most likely to be remembered by consumers.

12. The LUCKYVITAMIN.COM mark of the opposed application so resembles Opposer's LUCKY mark as to be likely to cause confusion, mistake, or to deceive consumers, within the usage and meaning of Section 2(d) of the Trademark Act of 1946, as amended, when used by Applicant on or in connection with Applicant's identified services.

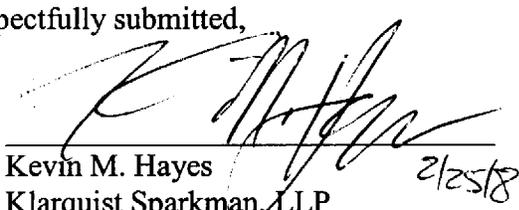
WHEREFORE, Opposer deems that it will be injured and damaged by registration of the mark of application Serial No. 77/115,775 and Opposer requests that this opposition be sustained, that said application be rejected, and that no registration be issued thereon.

This Notice of Opposition is being filed together with the filing fee stated in 37 C.F.R.

§ 2.6(a)(17).

Respectfully submitted,

By

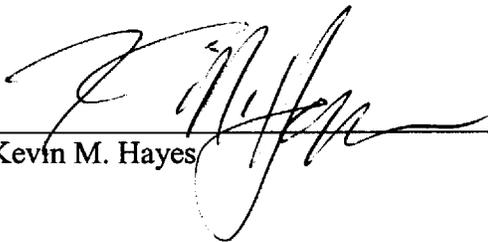
  
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Portland, Oregon 97204  
Telephone: (503) 226-7391  
Attorneys for Opposer

2/25/18

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 25, 2008, a true copy of the foregoing **Notice of Opposition** was served on Applicant by first class mail, postage prepaid, to:

S & G Properties, LLC d/b/a LuckyVitamin.com 18 West Mount Kirk Avenue Norristown, Pennsylvania 19403	Rex Donnelly, Esq. RatnerPrestia Nemours Building 1007 Orange Street Suite 1100 Wilmington, Delaware 19899
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