

ESTTA Tracking number: **ESTTA218760**

Filing date: **06/18/2008**

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	NBTY, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2100 Smithtown Avenue Ronkonkoma, NY 11779 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
----------------------	---

Applicant Information

Application No	77427750	Publication date	05/20/2008
Opposition Filing Date	06/18/2008	Opposition Period Ends	06/19/2008
Applicant	Phyto Tech Corp. 30111 Tomas Rancho Santa Margarita, CA 92688 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements
Class 030. All goods and services in the class are opposed, namely: Sugar substitutes; Natural sweetener

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1813366	Application Date	04/12/1993
Registration Date	12/28/1993	Foreign Priority Date	NONE
Word Mark	GOOD 'N NATURAL		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1981/11/03 First Use In Commerce: 1981/11/03 vitamins and nutritional supplements

U.S. Registration No.	1232324	Application Date	12/14/1981
Registration Date	03/22/1983	Foreign Priority Date	NONE
Word Mark	GOOD 'N NATURAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1981/11/03 First Use In Commerce: 1981/11/03 Nutritional Supplement Containing Vitamins		

Attachments	DOCSOPEN- #602443-v1-NBTY_Opposition_Good__N_Natural_v__Good__N_Sweet.pdf (6 pages)(20171 bytes) Good 'N Natural - Exhibit A.pdf (5 pages)(58042 bytes) Good 'N Natural - Exhibit B.pdf (5 pages)(58167 bytes)
-------------	--

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	/scott b. fisher/
Name	Scott B. Fisher
Date	06/18/2008

Rancho Santa Margarita, California 92688 (the “Applicant”), 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. 1,813,366, registered December 28, 1993, on the Principal Register for the trademark GOOD ‘N NATURAL, covering the following goods:

“Vitamins and nutritional supplements” in International Class 005.

Affidavits under Sections 8, 9 and 15 of the Trademark Act (15 U.S.C. § 1065) were filed, accepted and acknowledged by the United States Patent and Trademark Office (“PTO”) and the trademark GOOD ‘N NATURAL has been timely renewed, which renders Opposer’s right to use the mark GOOD ‘N NATURAL on said goods incontestable. (See Exhibit “A”).

2. Prior to that time, Opposer, by duly recorded assignment, owned and still owns all right, title and interest in United States Trademark Registration No. 1,232,324, registered January 14, 1983, on the Supplemental Register for the trademark GOOD ‘N NATURAL, covering the following goods and services:

“Nutritional supplement containing vitamins” in International Class 005.

Affidavits under Sections 8 and 9 of the Trademark Act (15 U.S.C. § 1065) were filed, accepted and acknowledged by the PTO. Furthermore, Opposer’s GOOD ‘N NATURAL mark has acquired distinctiveness as a result of its continuous and exclusive use since at least November 3, 1981, and therefore, Opposer’s right to use the GOOD ‘N NATURAL mark on said goods and services is incontestable. (See Exhibit “B”).

3. Opposer controls all right, title and interest in at least twenty (20) internationally registered GOOD 'N NATURAL trademarks. All marks identified in paragraph numbers 1-3 are hereinafter collectively referred to as the "GOOD 'N NATURAL Marks".

4. Opposer manufactures and markets in the United States and internationally a wide variety of vitamins and dietary and nutritional supplements under its well-known GOOD 'N NATURAL Marks.

5. Opposer has continuously used its distinctive GOOD 'N NATURAL Marks since at least as early as November 3, 1981, which is approximately 27 years before Applicant filed its intent-to-use application or any date of first use which Applicant could rely on for its GOOD 'N SWEET Mark.

6. Opposer has been actively expanding its use of its GOOD 'N NATURAL Marks. Through such extensive and continuous use, Opposer has acquired significant and valuable interest in the GOOD 'N NATURAL Marks. This interest will be injured by Applicant's use of the GOOD 'N SWEET Mark, which is substantially similar to Opposer's valuable GOOD 'N NATURAL Marks and confusingly similar in appearance, sound, connotation, and commercial impression to Opposer's valuable GOOD 'N NATURAL Marks.

7. Opposer has expended considerable time, money and effort in advertising and promoting its GOOD 'N NATURAL Marks, the goods, products and services sold under those marks, and in developing substantial and exclusive goodwill and reputation in connection with the GOOD 'N NATURAL Marks, and the goods, products and services with which the GOOD 'N NATURAL Marks are used.

8. As a result of these expenditures, combined with substantial sales of quality goods, products and services worldwide under the GOOD 'N NATURAL Marks, the relevant consuming public has come to recognize the GOOD 'N NATURAL Marks as favorably distinguishing Opposer's goods, products and services from those of others.

9. Opposer has clear priority with respect to the use and registration of the GOOD 'N NATURAL Marks, or any mark confusingly similar thereto, in connection with vitamins and dietary and nutritional supplements, and other similar goods, products and services.

10. The dominant portion of Applicant's GOOD 'N SWEET Mark is confusingly similar in appearance, sound, spelling, connotation and commercial impression to the dominant portion of Opposer's GOOD 'N NATURAL Marks.

11. Applicant seeks to register a mark that is confusingly similar to Opposer's GOOD 'N NATURAL Marks, and will be used in connection with goods, products and services which are substantially similar to those goods, products and services sold under the GOOD 'N NATURAL Marks.

12. Applicant's goods, products and services that are or may be sold under its GOOD 'N SWEET 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, products and services.

13. Applicant's use and registration of the GOOD 'N SWEET 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, sponsors, or somehow is associated with Applicant's goods, products and services.

14. These consumers, upon purchasing, using or otherwise receiving Applicant's goods, products and services bearing the GOOD 'N SWEET 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, products and services and Opposer, all to the injury of Opposer's GOOD 'N NATURAL Marks.

15. Applicant's use and registration of the GOOD 'N SWEET Mark will dilute the distinctive quality of and diminish or detract from the prior rights firmly established by Opposer in and to the GOOD 'N NATURAL Marks.

16. 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. 77/427,750 is respectfully submitted to be in order and is hereby requested.

Dated: Garden City, New York
June 18, 2008

Respectfully submitted,

NBTY, Inc.

By: _____

Scott B. Fisher
Kei Robert Hirasawa
Jaspan Schlesinger Hoffman LLP
300 Garden City Plaza
Garden City, New York 11530
Tel. (516) 746-8000
Fax (516) 393-8282

Attorneys for Opposer
NBTY, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served on applicant, Phyto Tech Corp. d/b/a Blue California Co., identified as the owner of record in the Trademark Applications and Registrations Retrieval system ("TARR"), by mailing a copy thereof, via First Class Mail, in a properly addressed, postage prepaid wrapper, addressed to Phyto Tech Corp., 30111 Tomas, Rancho Santa Margarita, California 92688, and on counsel of record for applicant, identified in the TARR system, by mailing a copy thereof, via First Class Mail, in a properly addressed, postage prepaid wrapper, addressed to Roger N. Behle, Jr., Esq., Foley Bezek Behle & Curtis, LLP, 575 Anton Boulevard, Suite 710, Costa Mesa, California 92626, on June 18, 2008.

SCOTT B. FISHER



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jun 13 04:08:44 EDT 2008

- [TESS HOME](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE DICT](#)
- [SEARCH OG](#)
- [BOTTOM](#)
- [HELP](#)
- [PREV LIST](#)
- [CURR LIST](#)
- [NEXT LIST](#)
- [FIRST DOC](#)
- [PREV DOC](#)
- [NEXT DOC](#)
- [LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: Record 1 out of 4

- [TARR Status](#)
 - [ASSIGN Status](#)
 - [TDR](#)
 - [TTAB Status](#)
- (Use the "Back" button of the Internet Browser to return to TESS)*

Typed Drawing

Word Mark	GOOD 'N NATURAL
Goods and Services	IC 005. US 018. G & S: vitamins and nutritional supplements. FIRST USE: 19811103. FIRST USE IN COMMERCE: 19811103
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74378781
Filing Date	April 12, 1993
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 5, 1993
Registration Number	1813366
Registration Date	December 28, 1993
Owner	(REGISTRANT) Nature's Bounty, Inc. CORPORATION DELAWARE 90 Orville Drive Bohemia NEW YORK 11716 (LAST LISTED OWNER) NBTY, INC. CORPORATION By change of name from DELAWARE 90 ORVILLE DRIVE BOHEMIA NEW YORK 11716
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Lee Grosskreuz Hechtel, Harold D. Jones
Prior Registrations	1232324
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040219.
Renewal	1ST RENEWAL 20040219
Live/Dead Indicator	LIVE

- [TESS HOME](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE DICT](#)
- [SEARCH OG](#)
- [TOP](#)
- [HELP](#)
- [PREV LIST](#)
- [CURR LIST](#)

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-06-13 17:26:26 ET

Serial Number: [74378781 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: [1813366](#)

Mark (words only): [GOOD 'N NATURAL](#)

Standard Character claim: [No](#)

Current Status: [This registration has been renewed.](#)

Date of Status: [2004-02-19](#)

Filing Date: [1993-04-12](#)

Transformed into a National Application: [No](#)

Registration Date: [1993-12-28](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 11](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [40S -Scanning On Demand](#)

Date In Location: [2007-09-06](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [NBTY, INC.](#)

Address:

[NBTY, INC.](#)
[90 ORVILLE DRIVE](#)
[BOHEMIA, NY 11716](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

International Class: [005](#)

Class Status: [Active](#)

[vitamins and nutritional supplements](#)

Basis: [1\(a\)](#)

First Use Date: [1981-11-03](#)

First Use in Commerce Date: [1981-11-03](#)

ADDITIONAL INFORMATION

Section 2(f)

Prior Registration Number(s):
[1232324](#)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2007-09-06 - Case File In TICRS](#)

[2006-10-08 - Attorney Revoked And/Or Appointed](#)

[2006-10-08 - TEAS Revoke/Appoint Attorney Received](#)

[2004-02-19 - First renewal 10 year](#)

[2004-02-19 - Section 8 \(10-year\) accepted/ Section 9 granted](#)

[2003-12-24 - Combined Section 8 \(10-year\)/Section 9 filed](#)

[2003-12-24 - TEAS Section 8 & 9 Received](#)

[2003-12-24 - TEAS Change Of Correspondence Received](#)

[1999-06-07 - Section 8 \(6-year\) accepted & Section 15 acknowledged](#)

[1999-01-13 - Section 8 \(6-year\) and Section 15 Filed](#)

[1993-12-28 - Registered - Principal Register](#)

[1993-10-05 - Published for opposition](#)

[1993-09-03 - Notice of publication](#)

[1993-07-29 - Approved for Pub - Principal Register \(Initial exam\)](#)

[1993-07-21 - Assigned To Examiner](#)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
[Lee Grosskreuz Hechtel, Harold D. Jones](#)

Correspondent

Lee Grosskreuz Hechtel, Harold D. Jones

Jaspan Schlesinger Hoffman LLP

300 Garden City Plaza

Garden City NY 11530

Phone Number: 516-746-8000

Fax Number: 516-393-8282



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jun 13 04:08:44 EDT 2008

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 3 out of 4**

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark GOOD 'N NATURAL
 Goods and Services IC 005. US 018. G & S: Nutritional Supplement Containing Vitamins. FIRST USE: 19811103. FIRST USE IN COMMERCE: 19811103
 Mark Drawing Code (1) TYPED DRAWING
 Serial Number 73341395
 Filing Date December 14, 1981
 Current Filing Basis 1A
 Original Filing Basis 1A
 Published for Opposition March 22, 1983
 Supplemental Register Date January 14, 1983
 Registration Number 1232324
 Registration Date March 22, 1983
 Owner (REGISTRANT) Nature's Bounty, Inc. a.k.a. Good 'N Natural CORPORATION NEW YORK 90 ORVILLE DRIVE Bohemia NEW YORK 11716
 (LAST LISTED OWNER) NBTY, INC. CORPORATION BY ASSIGNMENT, BY CHANGE OF NAME DELAWARE 90 ORVILLE DRIVE BOHEMIA NEW YORK 11716
 Assignment Recorded ASSIGNMENT RECORDED
 Attorney of Record Lee Grosskreuz Hechtel, Harold D. Jones
 Type of Mark TRADEMARK
 Register SUPPLEMENTAL
 Affidavit Text SECT 8 (6-YR). SECTION 8(10-YR) 20030519.
 Renewal 1ST RENEWAL 20030519
 Live/Dead Indicator LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[TOP](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-06-13 17:24:56 ET

Serial Number: [73341395 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: [1232324](#)

Mark (words only): [GOOD 'N NATURAL](#)

Standard Character claim: [No](#)

Current Status: [This registration has been renewed.](#)

Date of Status: [2003-05-19](#)

Filing Date: [1981-12-14](#)

Transformed into a National Application: [No](#)

Registration Date: [1983-03-22](#)

Register: [Supplemental](#)

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [40S -Scanning On Demand](#)

Date In Location: [2008-04-21](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [NBTY, INC.](#)

Address:

[NBTY, INC.](#)
[90 ORVILLE DRIVE](#)
[BOHEMIA, NY 11716](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

International Class: [005](#)

Class Status: [Active](#)

[Nutritional Supplement Containing Vitamins](#)

Basis: [1\(a\)](#)

First Use Date: [1981-11-03](#)

First Use in Commerce Date: [1981-11-03](#)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2008-04-21 - Case File In TICRS](#)

[2006-10-08 - Attorney Revoked And/Or Appointed](#)

[2006-10-08 - TEAS Revoke/Appoint Attorney Received](#)

[2003-05-19 - First renewal 10 year](#)

[2003-05-19 - Section 8 \(10-year\) accepted/ Section 9 granted](#)

[2003-03-21 - Combined Section 8 \(10-year\)/Section 9 filed](#)

[2003-03-21 - TEAS Section 8 & 9 Received](#)

[1990-01-31 - Section 8 \(6-year\) accepted](#)

[1989-10-12 - Post Registration action mailed - Section 15](#)

[1989-07-07 - Response received for Post Registration action](#)

[1989-06-22 - Post Registration action mailed - Section 7](#)

[1988-10-14 - Post Registration action mailed - Section 8](#)

[1988-07-11 - Section 8 \(6-year\) and Section 15 Filed](#)

[1983-03-22 - Registered - Supplemental Register](#)

[1983-02-22 - Notice of publication](#)

[1983-01-27 - Approved for Pub - Principal Register \(Initial exam\)](#)

[1982-09-29 - Non-final action mailed](#)

[1982-08-18 - Assigned To Examiner](#)

[1983-01-27 - Approved for Pub - Principal Register \(Initial exam\)](#)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Lee Grosskreuz Hechtel, Harold D. Jones

Correspondent

Lee Grosskreuz Hechtel, Harold D. Jones

Jaspan Schlesinger Hoffman LLP

300 Garden City Plaza

Garden City NY 11530

Phone Number: 516-746-8000

Fax Number: 516-393-8282
