

ESTTA Tracking number: **ESTTA271652**

Filing date: **03/12/2009**

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	Drugtech Corporation
Granted to Date of previous extension	04/08/2009
Address	300 Delaware Avenue Suite 1270 Wilmington, DE 19801 UNITED STATES

Attorney information	Bryce J. Maynard Buchanan, Ingersoll & Rooney, PC P.O. Box 1404 Alexandria, VA 22313-1404 UNITED STATES bryce.maynard@bipc.com Phone:703-836-6620
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Applicant Information

Application No	77523682	Publication date	12/09/2008
Opposition Filing Date	03/12/2009	Opposition Period Ends	04/08/2009
Applicant	DRS Nutrition, LLC PO Box 2569 Monument, CO 80132 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2007/07/05 First Use In Commerce: 2007/07/05
All goods and services in the class are opposed, namely: Nutritionally fortified beverages

Grounds for Opposition

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

U.S. Registration No.	2031082	Application Date	05/19/1995
Registration Date	01/14/1997	Foreign Priority Date	NONE
Word Mark	NATALCARE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1995/11/30 First Use In Commerce: 1995/11/30 vitamin and mineral supplements
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Attachments	Notice of Opposition NATALIFE.pdf (5 pages)(28948 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	/Bryce J. Maynard/
Name	Bryce J. Maynard
Date	03/12/2009

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

RE: U.S. Trademark Application Serial No. 77/523,682
Published in the *Official Gazette* on December 9, 2008

DRUGTECH CORPORATION,)	
)	
Opposer,)	
)	Opposition No. _____
-v-)	
)	
DRS NUTRITION, LLC)	
)	
Applicant)	
)	
Attorney Docket No. 1032058-000794)	
_____)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Commissioner:

In the matter of U.S. Trademark Application Serial No. 77/523,682, filed on July 16, 2008 by DRS NUTRITION, LLC (“Applicant”), to register the mark NATALIFE and Design (“Applicant’s NATALIFE Mark”) in connection with "nutritionally fortified beverages" in International Class 5 (“Applicant's Goods”), and published in the *Official Gazette* on December 9, 2008, Drugtech

Corporation ("Opposer") believes that it will be damaged by registration of Applicant's NATALIFE Mark and hereby opposes same. The grounds for this opposition are as follows:

1. Applicant is the record owner of Application Serial No. 77/523,682 for Applicant's NATALIFE Mark in connection with Applicant's Goods.

2. Upon information and belief, Applicant did not use Applicant's NATALIFE Mark in connection with Applicant's Goods prior to July 5, 2007, the date of first use alleged in Application Serial No. 77/523,682.

3. Upon information and belief, Applicant did not use Applicant's NATALIFE Mark in connection with Applicant's Goods in interstate commerce in the United States prior to July 5, 2007, the date of first use alleged in Application Serial No. 77/523,682.

4. Opposer is a Delaware Corporation with a business address at 900 Market Street, Wilmington, Delaware 19801.

5. Opposer is the owner of U.S. Trademark Registration No. 2,031,082 for the mark NATALCARE (hereinafter "Opposer's NATALCARE Mark") in connection with "vitamin and mineral supplements" in International Class 5 (hereinafter referred to as "Opposer's Goods").

6. Commencing long prior to the filing date of Application Serial No. 77/523,682 and any use by Applicant of Applicant's NATALIFE Mark, Opposer has been and is now engaged in the business of advertising, offering for sale and selling Opposer's Goods under Opposer's NATALCARE Mark.

7. Commencing long prior to the filing date of Application Serial No. 77/523,682 and any use by Applicant of Applicant's NATALIFE Mark, Opposer has used and is now using Opposer's

NATALCARE Mark in connection with the advertising, offering for sale and selling of Opposer's Goods in interstate commerce in the United States.

8. Due to Opposer's longstanding and continuous use of Opposer's NATALCARE Mark in connection with Opposer's Goods, Opposer's NATALCARE Mark has become well known as designating Opposer's Goods throughout the United States.

9. Opposer enjoys substantial and exclusive goodwill and a fine reputation throughout the United States in connection with Opposer's NATALCARE Mark.

10. Applicant's NATALIFE Mark in Application Serial No. 77/523,682 is highly similar to Opposer's NATALCARE Mark in sight, sound, and commercial impression.

11. Applicant's Goods are closely related to Opposer's Goods and are sold to identical or highly similar types of consumers through similar channels of trade.

12. Applicant's NATALIFE Mark in Application Serial No. 77/523,682 so resembles Opposer's previously registered and used NUTRINATE Mark as to be likely, when applied to Applicant's Goods, to cause confusion, to cause mistake, or to deceive, by creating the erroneous impression that Applicant's Goods originate from or are associated with Opposer, or that Applicant's Goods are authorized, endorsed or sponsored by Opposer.

13. Applicant's filing of Application Serial No. 77/523,682 for Applicant's NATALIFE Mark was without license, authorization or permission from Opposer.

14. The granting of a trademark registration for Applicant's NATALIFE Mark would violate and diminish the prior and superior rights of Opposer in Opposer's NATALCARE Mark and would be in violation of 15 U.S.C. § 1052(d).

15. Opposer would be damaged if Application Serial No. 77/523,682 is allowed to register because Applicant will obtain statutory rights in Applicant's NATALIFE Mark in violation and derogation of the established prior rights of Opposer in Opposer's NATALCARE Mark.

WHEREFORE, Opposer requests that its Opposition be sustained, that Application Serial No. 77/523,682 be rejected and that the registration of Applicant's NATALIFE Mark as a trademark to Applicant be refused, and for such other relief as may be deemed just and proper.

Respectfully submitted,

DRUGTECH CORPORATION

Date: March 12, 2009

/Bryce J. Maynard/
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Bryce J. Maynard
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(703) 836-6620

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served
this 12th day of March, 2009 by first-class mail, postage prepaid, on:

Jake Jenkins
P.O. Box 2569
Monument, CO 80132

/Michelle A. Jackson/
Michelle A. Jackson