

ESTTA Tracking number: **ESTTA282033**

Filing date: **05/05/2009**

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	Vitalife, Inc.		
Entity	Corporation	Citizenship	California
Address	2459 West 208th Street Suite 101 Torrance, CA 90501 UNITED STATES		

Attorney information	Elizabeth A. Linford Ladas & Parry LLP 5670 Wilshire Boulevard Suite 2100 Los Angeles, CA 90036 UNITED STATES elinford@la.ladas.com Phone:3239342300		
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Applicant Information

Application No	75810190	Publication date	04/07/2009
Opposition Filing Date	05/05/2009	Opposition Period Ends	05/07/2009
Applicant	Vitalife, Inc. 2459 West 208th Street, Suite 101 Torrance, CA 90501 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary food and nutritional supplements for humans, namely, vitamin and mineral and herbal supplements and mixtures

Applicant Information

Application No	75810188	Publication date	04/07/2009
Opposition Filing Date	05/05/2009	Opposition Period Ends	05/07/2009
Applicant	Vitalife, Inc. 2459 West 208th Street, Suite 101 Torrance, CA 90501 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary food and nutritional supplements for humans, namely, vitamin and mineral and herbal supplements and mixtures

Applicant Information

Application No	75775546	Publication date	04/07/2009
Opposition Filing Date	05/05/2009	Opposition Period Ends	05/07/2009
Applicant	Vitalife, Inc. 2459 West 208th Street, Suite 101 Torrance, CA 90501 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary food and nutritional supplements for humans, namely, herbal supplements and mixtures

Applicant Information

Application No	75716686	Publication date	04/07/2009
Opposition Filing Date	05/05/2009	Opposition Period Ends	05/07/2009
Applicant	Vitalife, Inc. 2459 W. 208th Street Suite 101 Torrance, CA 90501 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1998/06/08 First Use In Commerce: 1998/06/08 All goods and services in the class are opposed, namely: Dietary food and nutritional supplements for humans, namely, vitamin and mineral supplements and mixtures thereof
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Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1884547	Application Date	02/28/1992
Registration Date	03/21/1995	Foreign Priority Date	NONE
Word Mark	VITALITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1985/12/00 First Use In Commerce: 1985/12/00 nutritional supplements in all forms including tablets, capsules, liquids and powders; food supplements; acidophilus food supplements; dietary food supplements herbs; herbal juices, teas and all for health purposes Class 029. First use: First Use: 1985/12/00 First Use In Commerce: 1985/12/00 protein for use as a food additive; vegetable extracts; dried fruit, processed fruits and vegetables all goods sold on a one to one basis directly to consumers and not through retail outlets		

Attachments	Combined Not of Opp.PDF (6 pages)(265404 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	/elizabeth a linfoord/
Name	Elizabeth A. Linfoord
Date	05/05/2009

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

THE SUNRIDER CORPORATION,

Opposer,

v.

VITALIFE, INC.,

Applicant.

Opposition No. _____

COMBINED NOTICE OF OPPOSITION

The Sunrider Corporation, a corporation organized and existing under the laws of the State of Utah d/b/a Sunrider International, with an address of 1625 Abalone Avenue, Torrance, California 90501 (“Opposer”), believes it will be damaged by the registration of the marks VITALIFE AROUSAL FOR WOMEN, as displayed in Trademark Application Serial No. 75/810190, VITALIFE AROUSAL FOR MEN, as displayed in Trademark Application Serial No. 75/810188, VITALIFE ENERGY-BOOST, as displayed in Application Serial No. 75/775546, and VITALIFE FOUR, as displayed in Trademark Application Serial No. 75/716686 (collectively, “Applicant’s Marks”), each in the name of Vitalife, Inc., a California corporation with an address of 2459 West 208th Street, Suite 101, Torrance, California 90501 (“Applicant”), and by and through its attorneys, hereby opposes the same.

Applicant’s Marks were published for opposition in the *Official Gazette* dated April 7, 2009. Thus, this Combined Notice of Opposition challenging the registration of Applicant’s Marks is timely filed.

The grounds for opposing registration of Applicant’s Marks are as follows:

1. Opposer is the owner of U.S. Trademark Registration No. 1,884,547 for the mark VITALITE for use on “nutritional supplements in all forms including tablets, capsules, liquids and powders; food supplements; acidophilus food supplements; dietary foods supplements herbs; herbal juices, teas and all for health purposes” in Class 5, as well as “protein for use as a food additive; vegetable extracts; dried fruit, processed fruits and vegetables all goods sold on a one to one basis directly to consumers and not through retail outlets” in Class 29 (collectively, “Opposer’s Goods”).

2. U.S. Trademark Registration No. 1,884,547 was deemed incontestable on May 7, 2001, is valid and subsisting and is evidence of Opposer’s exclusive right to use VITALITE in connection with the goods identified therein.

3. U.S. Trademark Registration No. 1,884,547 was renewed for an additional term of ten years on April 8, 2005 by the United States Patent and Trademark Office.

4. U.S. Trademark Registration No. 1,884,547 is in full force and effect and, along with Opposer’s goodwill in connection with use of Opposer’s Mark, has never been abandoned and is widely recognized as representing goods provided by Opposer.

5. Opposer has continuously used Opposer’s Mark to promote Opposer’s Goods in interstate commerce since at least as early as December 1985 and long before any date of use upon which Applicant can rely.

6. Sales of Opposer’s Goods have continuously increased since adoption of Opposer’s Mark and, by virtue of the excellent quality thereof, Opposer has acquired an excellent and widespread reputation among consumers and industry professionals, alike.

7. Opposer has extensively sold and promoted Opposer’s Goods in commerce under Opposer’s Mark since 1985 and has devoted substantial time, money and effort in the establishment and maintenance of high standards of quality for the products marketed under Opposer’s Mark. As a result, Opposer has established substantial recognition and secondary

meaning in Opposer's Mark, which identifies Opposer's Goods and represents the valuable goodwill of Opposer in its business.

8. Opposer's Mark, by virtue of its wide renown, has developed a secondary meaning and significance in the minds of the trade and the purchasing public, such that Opposer's Goods offered under Opposer's Mark are immediately identified by the purchasing public with Sunrider International. Opposer's Mark has become a famous mark due to widespread recognition of the mark and Opposer's extensive efforts to promote Opposer's Goods offered under Opposer's Mark.

9. Upon information and belief, Opposer's rights in Opposer's Mark were established prior to any rights claimed by Applicant in Applicant's Marks.

10. Notwithstanding Opposer's prior rights in and to Opposer's Mark, Applicant applied to register the mark VITALIFE AROUSAL FOR WOMEN on October 19, 1999 for use in Class 5 for "dietary food and nutritional supplements for humans, namely, vitamin and mineral and herbal supplements and mixtures" under Application Serial No. 75/810190.

11. Notwithstanding Opposer's prior rights in and to Opposer's Mark, Applicant applied to register the mark VITALIFE AROUSAL FOR MEN on October 19, 1999 for use in Class 5 for "dietary food and nutritional supplements for humans, namely, vitamin and mineral and herbal supplements and mixtures" under Application Serial No. 75/810188.

12. Notwithstanding Opposer's prior rights in and to Opposer's Mark, Applicant applied to register the mark VITALIFE ENERGY-BOOST on September 10, 1999 for use in Class 5 for "dietary food and nutritional supplements for humans, namely, herbal supplements and mixtures" under Application Serial No. 75/775546.

13. Notwithstanding Opposer's prior rights in and to Opposer's Mark, Applicant applied to register the mark VITALIFE FOUR on May 28, 1999 for use in Class 5 for "dietary food and nutritional supplements for humans, namely, vitamin and mineral supplements and mixtures thereof" under Application Serial No. 75/716686.

14. Applicant's Marks so resemble Opposer's Mark in terms of sight, sound, and commercial connotation that when applied to Applicant's goods in Class 5, as identified in Paragraphs 9 through 12 herein, Applicant's Marks are likely to cause confusion, to cause mistake or to deceive the relevant public as to the source of such goods, thereby causing irreparable damage to Opposer.

15. Applicant's Marks incorporate the term VITALIFE, which is confusingly similar in terms of appearance, pronunciation and commercial connotation to Opposer's Mark, VITALITE, particularly when used in connection with goods in Class 5 that are identical to and competitive with those offered by Opposer in Class 5.

16. Because Opposer's Goods and the goods of Applicant described in Paragraphs 10 through 13 herein are identical, Opposer's and Applicant's target customers are the same, the conditions under which and buyers to whom sales are made are the same, and the channels of trade through which the relevant goods of each party travel are the same, consumers are likely to believe that the goods offered under Applicant's Marks are sponsored by or in some way related to or affiliated with Opposer and Opposer's Goods, thereby causing irreparable damage to Opposer and Opposer's Marks.

17. Applicant's intended use and registration of Applicant's Marks will dilute the distinctive significance of Opposer's Mark as identifying a single source of goods, thereby causing irreparable damage to Opposer and Opposer's Mark.

18. Opposer has superior and paramount rights in Opposer's Mark, as compared to Applicant, and Opposer has used Opposer's Mark in commerce continuously from a date long prior to the filing date of Trademark Application Serial Nos. 75/810190, 75/810188, 75/775546, and 75/716686 by Applicant. Consequently, confusion, mistake and/or deception in the trade and among relevant consumers is likely, thereby causing irreparable damage to Opposer and Opposer's Mark.

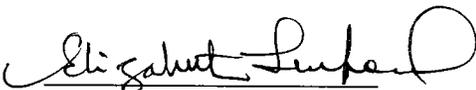
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WHEREFORE, Opposer will be damaged by the registration of Applicant's Marks and hereby requests that this Combined Notice of Opposition be sustained and that Trademark Application Serial Nos. 75/810190, 75/810188, 75/775546, and 75/716686 be denied registration.

Opposer requests that the Board charge the \$1,200 combined filing fee for opposition of four applications in one class of goods each to the undersigned's Deposit Account Number 12-0415.

Respectfully submitted,

Dated: May 5, 2009

By: 

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that a copy of the foregoing COMBINED NOTICE OF OPPOSITION is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

On 5/5/2009 
Date Signature

ELIZABETH A. LINFORD

(Typed or Printed Name of Person Signing Certificate)

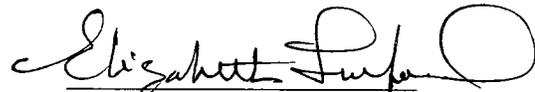
Combined Notice of Opposition
Serial Nos. 75/716686, 75/775546, 75/810188, 75/810190
Applicant: Vitalife, Inc.
Opposer: The Sunrider Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing COMBINED NOTICE OF OPPOSITION has been served on opposing counsel on this 5th day of May 2009 via First Class Mail, postage prepaid to:

Kevin Anderson, Esq.
Law Office of Kevin Anderson
208 Horizon Avenue, Suite D
Venice, California 90291

Date: May 5, 2009


Elizabeth A. Linford