

ESTTA Tracking number: **ESTTA285111**

Filing date: **05/20/2009**

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	Abbott Laboratories
Granted to Date of previous extension	05/20/2009
Address	100 Abbott Park Road Abbott Park, IL 60064 UNITED STATES

Attorney information	Raymond I. Geraldson, Jr. Pattishall McAuliffe Newbury Hilliard & Geraldson LLP 311 S. Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES rgeraldson@pattishall.com, ksk@pattishall.com, lrb@pattishall.com Phone:312-554-7960
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Applicant Information

Application No	77555231	Publication date	01/20/2009
Opposition Filing Date	05/20/2009	Opposition Period Ends	05/20/2009
Applicant	BRUCE L. HOWE 1487 POINSETTIA # 120 VISTA, CA 92081 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary Supplement

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.	965204	Application Date	06/09/1972
Registration Date	07/31/1973	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 005). First use: First Use: 1972/03/17 First Use In Commerce: 1972/03/17 LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING

U.S. Registration No.	1475612	Application Date	06/22/1987
Registration Date	02/09/1988	Foreign Priority Date	NONE
Word Mark	PEDIASURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1987/01/30 First Use In Commerce: 1987/01/30 PEDIATRIC NUTRITIVE PREPARATION		

U.S. Registration No.	1485012	Application Date	09/02/1987
Registration Date	04/19/1988	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1986/10/29 First Use In Commerce: 1986/10/29 DIETARY FOOD SUPPLEMENTS; NAMELY, VITAMINS AND MINERALS IN A FLAVORED PUDDING BASE		

U.S. Registration No.	2269656	Application Date	08/22/1997
Registration Date	08/10/1999	Foreign Priority Date	NONE
Word Mark	NEOSURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 infant formula		

Attachments	MEMOSURE.pdf (20 pages)(481981 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	/Raymond I. Geraldson, Jr./
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Name	Raymond I. Geraldson, Jr.
Date	05/20/2009

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

In The Matter of Application Serial No. 77/555,231: MEMOSURE
Published in the *Official Gazette* on January 20, 2009, Page TM 516 in Class 5

ABBOTT LABORATORIES,)	
)	
Opposer,)	
v.)	Opposition No.
)	
BRUCE L. HOWE,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Abbott Laboratories ("Opposer"), an Illinois corporation, having its principal place of business at 100 Abbott Park Road D377/AP6A, Abbott Park, Illinois 60064, believes it will be damaged by registration of the trademark shown in Application Serial No. 77/555,231, and opposes the same.

The grounds for opposition are as follows:

1. Opposer has for many years been engaged in the manufacture, distribution, advertising and sale of a wide variety of nutritional products and supplements, including products sold under the marks ENSURE, PEDIASURE, and NEOSURE (collectively, "SURE Marks").
2. Consumers have come to recognize products advertised and sold under the SURE Marks by the common –SURE portion of their name, and as being related and coming from a common source, Opposer.
3. Since long prior to the priority filing date of the application opposed herein, Opposer has continually used its SURE family of marks in interstate commerce in connection

with the advertising, promotion and sale of nutritional products and supplements. Opposer owns numerous valid and subsisting United States trademark registrations and applications for its SURE Marks, including, but not limited to:

Trademark	Registration No.	Registration Date	Goods
ENSURE	Reg. No. 965,204	7/31/1973	Liquid nutritive preparations for oral or gavage feeding (IC 005)
PEDIASURE	Reg. No. 1,475,612	2/9/1988	Pediatric nutritive preparation (IC 005)
ENSURE	Reg. No. 1,485,012	4/19/1988	Dietary food supplements; namely, vitamins and minerals in a flavored pudding base (IC 005)
NEOSURE	Reg. No. 2,269,656	8/10/1999	Infant formula (IC 005)

Attached hereto as Exhibits A, B, C, and D are copies of these registration certificates and print-outs from the United States Patent and Trademark Office online database showing the current status of these registrations.

4. All of the above registrations are valid, subsisting and owned by Opposer. These registrations have become incontestable under 15 U.S.C. § 1065 and the certificates of registration thereof constitute "conclusive evidence" of "the validity of the registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use of the mark[s] in connection with the goods or services specified in the registration." 15 U.S.C. § 1115.

5. Opposer has sold many millions of dollars worth of goods under its SURE Marks throughout the United States, and has spent millions of dollars advertising and promoting its SURE Marks throughout the United States.

6. By virtue of its extensive sales, advertising and promotion, Opposer's SURE Marks have become extremely well-known throughout the United States, and Opposer now owns an immensely valuable goodwill symbolized by its SURE Marks.

7. By virtue of Opposer's long use and extensive sales throughout the United States and the success of Opposer's advertising and promotional efforts, Opposer's SURE Marks are distinctive and famous. The SURE Marks achieved that distinctiveness and fame prior to the filing date of the opposed application.

8. On August 25, 2008, Applicant filed an intent-to-use application to register the trademark MEMOSURE in International Class 5 for "dietary supplement," Serial No. 77/555,231.

9. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any basis for claiming rights in MEMOSURE in connection with the identified goods prior to August 25, 2008, the filing date of the application opposed herein.

10. Applicant's intended use of and application to register MEMOSURE is without Opposer's consent.

11. Applicant's intended use of MEMOSURE for the applied for goods is likely to cause confusion, mistake or deception with Opposer and its SURE Marks, individually and collectively, and is likely to cause purchasers and others erroneously to believe that Applicant's goods are Opposer's goods or that Applicant or its goods are in some way legitimately connected with, sponsored or approved by Opposer.

12. Applicant's use of MEMOSURE will dilute the distinctiveness of Opposer's SURE Marks individually and collectively.

13. Accordingly, Applicant's registration of MEMOSURE would be damaging to Opposer.

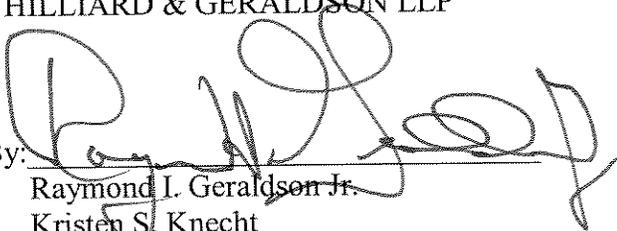
WHEREFORE, Opposer prays that its opposition be sustained and registration of Application Ser. No. 77/555,231 be refused.

Opposer herein submits the requisite filing fee of \$300. Please debit any deficiency or credit any overpayment to Account No. 16-0650. Please address all correspondence to Raymond I. Geraldson, Jr., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Dated: May 20, 2009

By:

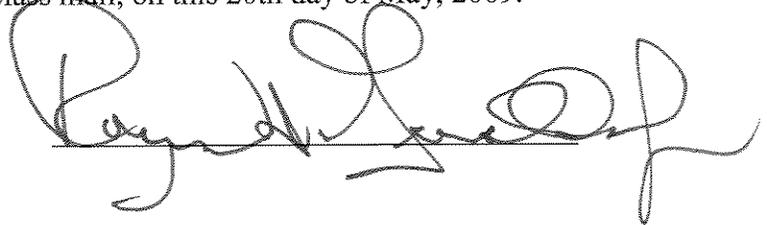


Raymond I. Geraldson Jr.
Kristen S. Knecht
311 South Wacker Drive
Suite 5000
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Raymond I. Geraldson, Jr., hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Bruce L. Howe, 1487 Poinsettia Avenue, Suite 120, Vista, California 92081-8538, via first-class mail, on this 20th day of May, 2009.

A handwritten signature in black ink, appearing to read "Raymond I. Geraldson, Jr.", written over a horizontal line.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this **NOTICE OF OPPOSITION** is being electronically transmitted to the Patent and Trademark Office on May 20, 2009.

A handwritten signature in black ink, appearing to read "Raymond I. Geraldson, Jr.", written over a horizontal line.

EXHIBIT A

Int. Cl.: 5

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 965,204

Registered July 31, 1973

Renewal Term Begins July 31, 1993

**TRADEMARK
PRINCIPAL REGISTER**

ENSURE

ABBOTT LABORATORIES (ILLINOIS
CORPORATION)
ABBOTT PARK, IL 60064

FIRST USE 3-17-1972; IN COMMERCE
3-17-1972.

FOR: LIQUID NUTRITIVE PREPARA-
TIONS FOR ORAL OR GAVAGE FEED-
ING, IN CLASS 46 (INT. CL. 5).

SER. NO. 72-427,152, FILED 6-9-1972.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 25, 1993.*

COMMISSIONER OF PATENTS AND TRADEMARKS

United States Patent Office

965,204

Registered July 31, 1973

PRINCIPAL REGISTER Trademark

Ser. No. 427,152, filed June 9, 1972

ENSURE

Abbott Laboratories (Illinois corporation)
North Chicago, Ill. 60064

For: LIQUID NUTRITIVE PREPARATIONS FOR
ORAL OR GAVAGE FEEDING, in CLASS 46 (INT.
CL. 5).

First use Mar. 17, 1972; in commerce Mar. 17, 1972.



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Typed Drawing

Word Mark	ENSURE
Goods and Services	IC 005. US 046. G & S: LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING. FIRST USE: 19720317. FIRST USE IN COMMERCE: 19720317
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	72427152
Filing Date	June 9, 1972
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0965204
Registration Date	July 31, 1973
Owner	(REGISTRANT) ABBOTT LABORATORIES CORPORATION ILLINOIS 100 ABBOTT PARK ROAD DEPT. 377/BLDG. AP6A ABBOTT PARK ILLINOIS 60064
Attorney of Record	MARY L. WINBURN
Type of Mark Register	TRADEMARK PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040108.
Renewal	1ST RENEWAL 20040108
Live/Dead Indicator	LIVE

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EXHIBIT B

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office

Reg. No. 1,475,612

Registered Feb. 9, 1988

**TRADEMARK
PRINCIPAL REGISTER**

PEDIASURE

ABBOTT LABORATORIES (ILLINOIS CORPORATION), TA ROSS LABORATORIES
ABBOTT PARK, IL 60064

FIRST USE 1-30-1987; IN COMMERCE
1-30-1987.

SER. NO. 668,373, FILED 6-22-1987.

FOR: PEDIATRIC NUTRITIVE PREPARATION, IN CLASS 5 (U.S. CL. 18).

ELAINE PARTHEMOS, EXAMINING ATTORNEY



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Word Mark PEDIASURE
Goods and Services IC 005. US 018. G & S: PEDIATRIC NUTRITIVE PREPARATION. FIRST USE: 19870130. FIRST USE IN COMMERCE: 19870130
Mark Drawing Code (1) TYPED DRAWING
Serial Number 73668373
Filing Date June 22, 1987
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition November 17, 1987
Registration Number 1475612
Registration Date February 9, 1988
Owner (REGISTRANT) ABBOTT LABORATORIES TA ROSS LABORATORIES CORPORATION ILLINOIS 100 Abbott Park Road ABBOTT PARK ILLINOIS 60064
Attorney of Record Nicole Hickey
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080212.
Renewal 1ST RENEWAL 20080212
Live/Dead Indicator LIVE

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EXHIBIT C

Int. Cl.: 5

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,485,012

Registered Apr. 19, 1988

**TRADEMARK
PRINCIPAL REGISTER**

ENSURE

ABBOTT LABORATORIES (ILLINOIS CORPORATION)
ABBOTT PARK, IL 60064

FOR: DIETARY FOOD SUPPLEMENTS;
NAMELY, VITAMINS AND MINERALS IN A
FLAVORED PUDDING BASE, IN CLASS 5 (U.S.
CL. 46).

FIRST USE 10-29-1986; IN COMMERCE
10-29-1986.

OWNER OF U.S. REG. NOS. 965,204, 1,051,691
AND OTHERS.

SER. NO. 682,161, FILED 9-2-1987.

RICHARD A. STRASER, EXAMINING ATTORNEY



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Typed Drawing

Word Mark	ENSURE
Goods and Services	IC 005. US 046. G & S: DIETARY FOOD SUPPLEMENTS; NAMELY, VITAMINS AND MINERALS IN A FLAVORED PUDDING BASE. FIRST USE: 19861029. FIRST USE IN COMMERCE: 19861029
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73682161
Filing Date	September 2, 1987
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 26, 1988
Registration Number	1485012
Registration Date	April 19, 1988
Owner	(REGISTRANT) ABBOTT LABORATORIES CORPORATION ILLINOIS 100 ABBOTT PARK ROAD ABBOTT PARK ILLINOIS 60064
Attorney of Record	Nicole Hickey
Prior Registrations	0965204;1051691;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080408.
Renewal	1ST RENEWAL 20080408
Live/Dead	

Indicator LIVE

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EXHIBIT D

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,269,656

United States Patent and Trademark Office

Registered Aug. 10, 1999

**TRADEMARK
PRINCIPAL REGISTER**

NEOSURE

ABBOTT LABORATORIES (ILLINOIS CORPORATION)
100 ABBOTT PARK ROAD
ABBOTT PARK, IL 600643500

FIRST USE 1-0-1999; IN COMMERCE
1-0-1999.

SN 75-345,035, FILED 8-22-1997.

FOR: INFANT FORMULA, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

RONALD MCMORROW, EXAMINING ATTORNEY



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Typed Drawing

Word Mark	NEOSURE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: infant formula. FIRST USE: 19990100. FIRST USE IN COMMERCE: 19990100
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75345035
Filing Date	August 22, 1997
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 15, 1998
Registration Number	2269656
Registration Date	August 10, 1999
Owner	(REGISTRANT) Abbott Laboratories CORPORATION ILLINOIS 100 Abbott Park Road Abbott Park ILLINOIS 60064
Attorney of Record	Mary L. Winburn
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080827.
Renewal	1ST RENEWAL 20080827
Live/Dead Indicator	LIVE

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CERTIFICATE OF SERVICE

I, Raymond I. Geraldson, Jr., hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Bruce L. Howe, 1487 Poinsettia Avenue, Suite 120, Vista, California 92081-8538, via first-class mail, on this 20th day of May, 2009.
