

ESTTA Tracking number: **ESTTA322658**

Filing date: **12/17/2009**

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	Cytosport, Inc.		
Entity	Corporation	Citizenship	California
Address	4795 Industrial Way Benicia, CA 94510 UNITED STATES		

Attorney information	Peter M. de Jonge Thorpe North and Western, LLP. P.O. Box 1219 Sandy, UT 84091-1219 UNITED STATES murphy@tnw.com, dejonge@tnw.com, barraclough@tnw.com, docket@tnw.com, connor@tnw.com Phone:8015666633		
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Applicant Information

Application No	77765973	Publication date	11/17/2009
Opposition Filing Date	12/17/2009	Opposition Period Ends	12/17/2009
Applicant	Poliski, Rachelle 3799 Poplar Springs Road Gainesville, GA 30507 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary supplements; Meal replacement bars

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3132139	Application Date	02/24/2005
Registration Date	08/22/2006	Foreign Priority Date	NONE
Word Mark	MIGHTY MILK		

Design Mark	MIGHTY MILK
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/12/00 First Use In Commerce: 2005/07/00 DIETARY AND NUTRITIONAL SUPPLEMENTS

U.S. Application No.	77103656	Application Date	02/09/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MIGHTY MILK BAR
Design Mark	MIGHTY MILK BAR
Description of Mark	NONE
Goods/Services	Class 005. First use: Dietary and nutritional supplement Class 029. First use: Fortified food, namely, protein based, nutrient-dense snack bars

U.S. Application No.	77103659	Application Date	02/09/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MIGHTY MILK N' OATS		

Design Mark	MIGHTY MILK N' OATS		
Description of Mark	NONE		
Goods/Services	Class 005. First use: Dietary and nutritional supplement Class 030. First use: Fortified food, namely, protein based, nutrient-dense oatmeal		

U.S. Application No.	77103668	Application Date	02/09/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MIGHTY MILK PUDDING		
Design Mark	MIGHTY MILK PUDDING		
Description of Mark	NONE		
Goods/Services	Class 005. First use: Dietary and nutritional supplement Class 030. First use: Fortified food, namely, protein based, nutrient-dense pudding		

Attachments	78574711#TMSN.jpeg (1 page)(bytes) 77103656#TMSN.jpeg (1 page)(bytes) 77103659#TMSN.jpeg (1 page)(bytes) 77103668#TMSN.jpeg (1 page)(bytes) 01098-32996.pdf (4 pages)(145090 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	/petermdejonge/
Name	Peter M. de Jonge
Date	12/17/2009

Peter M. de Jonge
J. Abby Barraclough
THORPE NORTH & WESTERN, L.L.P.
8180 South 700 East, Suite 350
Sandy, Utah 84070
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorneys for Cytosport, Inc.
Opposed Mark: MIGHTY MOO MOO
U.S. Trademark Application Serial Number 77/765,973

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

Cytosport, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Rachelle Poliski)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Cytosport, Inc. (hereinafter referred to as “Opposer”), a corporation organized and existing under the laws of the State of California, having a principal place of business at 4795 Industrial Way, Benicia, California 94510, believes it will be damaged by the registration of the mark MIGHTY MOO MOO in Application Serial No. 77/765,973, and opposes and alleges the following:

1. Upon information and belief, Rachelle Poliski (hereinafter referred to as “Applicant”), a U.S. citizen residing at 3799 Poplar Springs Rd, Gainesville, GA 30507, seeks to register the mark MIGHTY MOO MOO as a trademark for “dietary supplements; [and] meal

replacement bars” in International Class 005.

2. Opposer is the owner of U.S. Trademark Registration No. 3,132,139, for the mark MIGHTY MILK, for use in connection with “dietary supplements” in International Class 005.

3. Opposer is currently using and has continuously used the mark MIGHTY MILK in Registration No. 3,132,139 in interstate commerce since at least as early as December 2004.

4. Opposer has built up substantial good will in its MIGHTY MILK mark.

5. Registration of Applicant’s mark MIGHTY MOO MOO is likely to damage Opposer in that Applicant’s MIGHTY MOO MOO mark, when used on or in connection with the identified goods, so resembles Opposer’s MIGHTY MILK mark, as to be likely to cause confusion, to cause mistake or to deceive. Such confusion is likely to falsely suggest a connection between Applicant and Opposer.

6. Opposer is the owner of U.S. Trademark Application Serial No. 77/103,656, for the mark MIGHTY MILK BAR, for use in connection with a “dietary and nutritional supplements” in International Class 005, and for use in connection with “fortified food, namely, protein based, nutrient-dense snack bars” in International Class 029.

7. Opposer is the owner of U.S. Trademark Application Serial No. 77/103,659, for the mark MIGHTY MILK N’ OATS, for use in connection with a “dietary and nutritional supplement” in International Class 005; and for use in connection with “fortified food, namely, protein based, nutrient-dense oatmeal” in International Class 029.

8. Opposer is the owner of U.S. Trademark Application Serial No. 77/103,668, for the mark MIGHTY MILK PUDDING, for use in connection with “dietary and nutritional supplement” in International Class 005, and “fortified food, namely, protein based, nutrient-dense pudding” in International Class 030.

9. Opposer has built up substantial good will in its marks for MIGHTY MILK BAR,

MIGHTY MILK N' OATS and MIGHTY MILK PUDDING.

10. Registration of Applicant's mark MIGHTY MOO MOO is likely to damage Opposer in that Applicant's mark, when used on or in connection with the identified goods, so resembles Opposer's marks for MIGHTY MILK BAR, MIGHTY MILK N' OATS and MIGHTY MILK PUDDING as to be likely to cause confusion, to cause mistake or to deceive. Such confusion is likely to falsely suggest a connection between Applicant and Opposer.

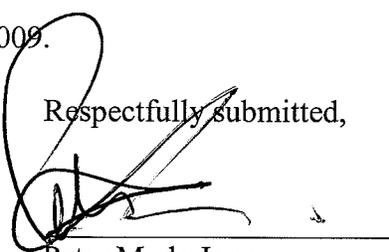
11. Upon information and belief, Applicant selected its mark with full knowledge of Opposer's marks.

WHEREFORE, Opposer requests that Application Serial No. 77/765,973 be refused registration, that no registration be issued to Applicant for the mark MIGHTY MOO MOO and that this Opposition be sustained in favor of Opposer.

That statutory Opposition Filing Fee of \$300.00 is included herewith. Please charge any additional fees and credit any overpayment to Deposit Account No. 20-0100.

DATED this 17th day of December, 2009.

Respectfully submitted,



Peter M. de Jonge
J. Abby Barraclough
Attorneys for Opposer
THORPE NORTH & WESTERN, L.L.P.
P.O. Box 1219
Sandy, Utah 84091-1219
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant by the method(s) indicated:

Rachelle Poliski
3799 Poplar Springs Rd
Gainesville, GA 30507-8613

- Hand Delivery
- United States Mail
- First Class, Postage Pre-Paid
- Overnight Delivery
- Fax Transmission
- Electronic Mail

on this 17th day of December, 2009.

