

ESTTA Tracking number: **ESTTA342558**

Filing date: **04/15/2010**

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.
Granted to Date of previous extension	04/18/2010
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 hill@tnw.com, sisneros@tnw.com, docket@tnw.com
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**Applicant Information**

Application No	77564534	Publication date	10/20/2009
Opposition Filing Date	04/15/2010	Opposition Period Ends	04/18/2010
Applicant	California Physicians Supplements 220 Newport Center Dr. #11565 Newport Beach, CA 92660 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Vitamin supplements
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**Grounds for Opposition**

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

U.S. Registration No.	2714802	Application Date	01/13/1999
Registration Date	05/13/2003	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Powdered nutritional supplement containing milk derived ingredients for adding to food or drink		
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U.S. Registration No.	2809666	Application Date	05/22/2000
Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark	<b>MUSCLE MILK</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/10/08 First Use In Commerce: 1999/10/08 nutritional supplements		

U.S. Registration No.	2973352	Application Date	05/27/2003
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Meal replacement drinks; meal replacement and dietary supplement drink mixes; protein based, nutrient-dense meal replacement bars; and pre-mixed nutritionally fortified beverages Class 029. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Protein based, nutrient-dense snack bars		

U.S. Registration No.	3333886	Application Date	02/09/2007
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK LIGHT		
Design Mark	<b>MUSCLE MILK LIGHT</b>		

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 Dietary and nutritional supplements

U.S. Registration No.	3311489	Application Date	02/09/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE

Word Mark	MUSCLE MILK N' OATS
Design Mark	

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 Dietary and nutritional supplement Class 030. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 Fortified food, namely, protein based, nutrient-dense oatmeal

U.S. Registration No.	3311490	Application Date	02/09/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE

Word Mark	MUSCLE MILK PUDDING
Design Mark	

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 Dietary and nutritional supplement Class 030. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 Fortified food, namely, protein based, nutrient-dense pudding

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			
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			
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	<b>MIGHTY MILK N' OATS</b>		
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	<b>MIGHTY MILK PUDDING</b>		
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		

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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	/Peter M. de Jonge/
Name	Peter M. de Jonge
Date	04/15/2010

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Attorneys for CytoSport, Inc.  
Opposed Mark: BONE MILK  
U.S. Trademark Application Serial Number 77/564,534

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

<p>CytoSport, Inc.  Opposer,  v.  California Physicians Supplements  Applicant.</p>	<p>Opposition No. _____</p>
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**NOTICE OF OPPOSITION**

CytoSport, Inc. (hereinafter referred to as “Opposer”), a corporation 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 BONE MILK in Application Serial No. 77/564,534, and opposes and alleges the following:

1. California Physicians Supplements (hereinafter referred to as “Applicant”), upon information and belief is corporation existing under the laws of the State of California, having a principal place of residence at 21163 Newport Center Dr. #137, Newport Beach, California,

92657, seeks to register the mark BONE MILK as a trademark for “dietary supplement” in International Class 005.

2. Opposer is the owner of U.S. Trademark Registration No. 2,714,802, for the mark MUSCLE MILK, for use in connection with “powdered nutritional supplement containing milk derived ingredients for adding to food or drink” in International Class 005.

3. Opposer is currently using and continuously used the mark MUSCLE MILK in Registration No. 2,714,802 in interstate commerce since at least as early as June of 1998.

4. Opposer is the owner of U.S. Trademark Registration No. 2,809,666, for the mark MUSCLE MILK, for use in connection with “nutritional supplements” in International Class 005.

5. Opposer is currently using and continuously used the mark MUSCLE MILK in Registration No. 2,809,666 in interstate commerce since at least as early as October of 1999.

6. Opposer is the owner of U.S. Trademark Registration No. 2,973,352, for the mark MUSCLE MILK, for use in connection with “meal replacement drinks; meal replacement and dietary supplement drink mixes; protein based, nutrient-dense meal replacement bars; and pre-mixed nutritionally fortified beverages” in International Class 005.

7. Opposer is currently using and continuously used the mark MUSCLE MILK in Registration No. 2,973,352 in interstate commerce since at least as early as October of 2001.

8. Opposer is the owner of U.S. Trademark Registration No. 3,333,886, for the mark MUSCLE MILK LIGHT, for use in connection with “dietary and nutritional supplements” in International Class 005.

9. Opposer is currently using and continuously used the mark MUSCLE MILK LIGHT in Registration No. 3,333,886 in interstate commerce since at least as early as January of 2007.

10. Opposer is the owner of U.S. Trademark Registration No. 3,311,489, for the mark MUSCLE MILK N' OATS, for use in connection with "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 030.

11. Opposer is currently using and continuously used the mark MUSCLE MILK N' OATS in Registration No. 3,311,489 in interstate commerce since at least as early as January of 2006.

12. Opposer is the owner of U.S. Trademark Registration No. 3,311,490, for the mark MUSCLE 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.

13. Opposer is currently using and continuously used the mark MUSCLE MILK PUDDING in Registration No. 3,311,490 in interstate commerce since at least as early as January of 2007.

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

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

16. 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 “dietary and nutritional supplement” in International Class 005, and for use in connection with “fortified food, namely, protein based, nutrient-dense snack bars” in International Class 029.

17. 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 “dietary and nutritional supplement; fortified food, namely, protein based, nutrient-dense oatmeal” in International Class 005.

18. 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.

19. Opposer has built up substantial good will in its marks for MUSCLE MILK, MUSCLE MILK LIGHT, MUSCLE MILK N’ OATS, MUSCLE MILK PUDDING, MIGHTY MILK, MIGHTY MILK BAR, MIGHTY MILK N’ OATS and MIGHTY MILK PUDDING.

20. Registration of Applicant’s mark BONE MILK 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 MUSCLE MILK, MUSCLE MILK LIGHT, MUSCLE MILK N’ OATS, MUSCLE MILK PUDDING, MIGHTY MILK, 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.

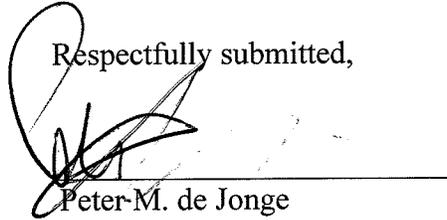
21. Upon information and belief, Applicant selected its mark with full knowledge of Opposer's marks.

WHEREFORE, Opposer requests that Application Serial No. 77/564,534 be refused registration, that no registration be issued to Applicant for the mark BONE MILK 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 ~~19~~ day of April, 2010.

Respectfully submitted,



Peter M. de Jonge

Jed H. Hansen

Gordon K. Hill

Attorneys for Opposer

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:

Diane Keurajian  
California Physicians Supplements  
21163 Newport Coast Dr. #137  
Newport Coast, CA 92657

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

on this 19<sup>th</sup> day of April, 2010.

  
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Tiffany L. Sisneros  
Paralegal