

ESTTA Tracking number: **ESTTA389526**

Filing date: **01/21/2011**

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	Merial Limited
Granted to Date of previous extension	01/22/2011
Address	Sandringham Avenue, Sandringham House, Harlow Business Park Harlow, Essex, CM19 5QA UNITED KINGDOM
Domestic Representative	BREWSTER TAYLOR SFTITES & HARBISON PLLC 1990 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314 UNITED STATES BTAYLOR@STITES.COM Phone:703-739-4900

### Applicant Information

Application No	85062103	Publication date	11/23/2010
Opposition Filing Date	01/21/2011	Opposition Period Ends	01/22/2011
Applicant	Organic India USA, LLC Suite T 5311 Western Ave Boulder, CO 80301 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2000/06/01 First Use In Commerce: 2010/05/22  
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

### 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.	1321734	Application Date	03/26/1984
Registration Date	02/26/1985	Foreign Priority Date	NONE
Word Mark	HEARTGARD		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1984/03/15 First Use In Commerce: 1984/03/15 Antiparasitic Preparation for Veterinary Use		
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U.S. Registration No.	2617156	Application Date	01/30/2001
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Registration Date	09/10/2002	Foreign Priority Date	NONE
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Word Mark	HEARTGARD		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 005. First use: First Use: 1999/12/01 First Use In Commerce: 1999/12/01 ANTIPARASITIC PREPARATION FOR VETERINARY USE		
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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	/BT/
Name	BREWSTER TAYLOR
Date	01/21/2011

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

**IN THE MATTER OF TRADEMARK  
APPLICATION SERIAL NOS. 85/062103**

<b>MERIAL LIMITED</b>	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No.
	)	
<b>ORGANIC INDIA USA, LLC</b>	)	
	)	
Applicant	)	
	)	

**NOTICE OF OPPOSITION**

**MERIAL LIMITED**, a limited liability company organized under the laws of the United Kingdom, with principal offices located at Sandringham Avenue, Sandringham House, Harlow Business Park, Harlow, Essex, CM19 5QA, United Kingdom (hereinafter “Opposer”), believes that it would be damaged by registration of the mark “HEART GUARD” (Serial No. 85/062,103) for “dietary and nutritional supplements” in the name of **ORGANIC INDIA USA, LLC**, a limited liability company organized under the laws of Colorado, with principal offices located at suite T, 5311 Western Avenue, Boulder, Colorado 80301 (hereinafter “Applicant”), and Opposer, by its undersigned attorneys, hereby requests that registration of the mark be denied on the following grounds:

1. In U.S. Application Serial No. 85/062,103, Applicant seeks registration of the mark “HEART GUARD” for “dietary and nutritional supplements”. The application was filed on June 14, 2010, and is based on Applicant’s alleged use of the mark in commerce in connection with said goods since May 22, 2010, under Section 1(a) of the Trademark Act (15 U.S.C. §1051(a)).

2. Opposer has used its marks “HEARTGARD”, and “HEARTGARD” stylized plus design (hereinafter “HEARTGARD marks”) for antiparasitic preparations for veterinary use sold in commerce in the United States continuously for years prior to the alleged first date of use in commerce of Applicant’s alleged mark “HEART GUARD” for dietary and nutritional supplements.

3. Opposer is the owner of U.S. Registration Nos. 1,321,734 and 2,617,156 for respectively “HEARTGARD” and “HEARTGARD” stylized plus design for an “antiparasitic preparation for veterinary use”. Registration No. 1,321,734 issued on February 26, 1985, and Registration No. 2,617,156 issued on September 10, 2002. Both registrations issued long prior to Applicant’s alleged first use in commerce of “HEART GUARD”, and both registrations are incontestable and operate as conclusive evidence of Opposer’s ownership of the marks set forth therein and of Opposer’s exclusive right to use the marks in connection with the goods listed in the registrations. *See* 15 U.S.C. §§ 1065 and 1115(b).

4. Opposer is a world-leading animal health company. The heartworm preventive sold by Opposer under its long-used and registered HEARTGARD marks is the leading heartworm preventive product sold in the United States. Through extensive nationwide sales and advertising of its products under its HEARTGARD marks, Opposer has developed considerable good will and customer recognition in the marks.

5. Notwithstanding Opposer’s strong prior rights in its HEARTGARD marks in the health field, Applicant has filed an application for registration of “HEART GUARD” for dietary and nutritional supplements which are advertised as improving cardiac function. Applicant’s purported “HEART GUARD” mark is nearly identical to Opposer’s HEARTGARD marks and is used for related products.

6. In view of the use of nearly identical marks of Applicant and Opposer and the close relationship of the goods sold under Opposer's HEARTGARD marks and the goods sold under Applicant's alleged "HEART GUARD" mark, purchasers are likely to be confused as to the source of the products and mistakenly attribute them to the same source, causing damage to the good will in Opposer's marks.

7. Since there is a likelihood of confusion, any defect, objections or faults found in the quality of the goods sold under Applicant's alleged "HEART GUARD" mark or false advertising under the alleged mark could seriously injure the reputation of Opposer and cause damage to the good will in Opposer's HEARTGARD marks. Thus, if the products sold under the alleged mark "HEART GUARD" mark do not "help to improve the cardiac function by cellular rejuvenation through herbs that nourish the blood, strengthen the hear muscle and improve circulation" and help "protect the heart from free radical damage related to everyday stress" as advertised, the false advertising could result in serious damage to the good will built up by Opposer in the HEARTGARD marks over the course of many years.

8. The grant of a registration to Applicant for its purported mark "HEART GUARD" would be in derogation of Opposer's prior rights in its HEARTGARD marks and thereby cause damage and injury to Opposer and cause confusion in the relevant purchasing public.

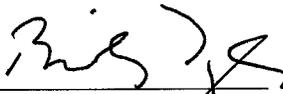
9. Applicant's purported "HEART GUARD" mark so resembles Opposer's previously used HEARTGARD marks as to be likely, when used in connection with Applicant's goods, to cause confusion, mistake or deception and thereby falls within the proscription of Section 2(d) of the statute, 15 U.S.C. § 1052(d), and should be denied registration.

19. WHEREFORE, Opposer believes that it would be damaged by grant to Applicant of registration on Application Serial No. 85/062,103 and prays that its opposition be sustained and that registration be denied.

Respectfully submitted,

STITES & HARBISON PLLC

January 21, 2011

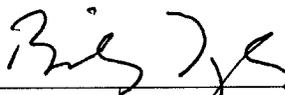
  
Brewster Taylor

Suite 900  
1199 North Fairfax Street  
Alexandria, Virginia, 22314  
(703)739-4900

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicants, this 21st day of January, 2011, by sending it via First Class Mail, postage prepaid, to:

Ms. Michele Sondheimer  
Organic India USA, LLC  
Suite T  
5311 Western Ave.  
Boulder, Colorado 80301

  
Brewster Taylor