

ESTTA Tracking number: **ESTTA404913**

Filing date: **04/21/2011**

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	Threshold Enterprises Ltd.		
Entity	Corporation	Citizenship	Delaware
Address	23 Janis Way Scotts Valley, CA 95066 UNITED STATES		

Attorney information	Rachel L. Chanin Arnold & Porter LLP One Embarcadero Center 22nd Floor San Francisco, CA 94111 UNITED STATES rachel.chanin@aporter.com, trademarkdocketing@aporter.com, monty.agarwal@aporter.com, jessica.lewis@aporter.com Phone:415 356 3000
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Applicant Information

Application No	85158489	Publication date	03/22/2011
Opposition Filing Date	04/21/2011	Opposition Period Ends	04/21/2011
Applicant	Atlantic Coast Media Group, LLC 499 Washington Blvd Jersey City, NJ 07310 UNITED STATES		

Goods/Services Affected by Opposition

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

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

U.S. Registration No.	1965003	Application Date	05/12/1994
Registration Date	04/02/1996	Foreign Priority Date	NONE
Word Mark	WELLNESS FORMULA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1984/07/01 First Use In Commerce: 1984/07/01 vitamins, dietary herbal supplements and nutritional supplements
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Attachments	VITAL WELLNESS Notice of Opposition.pdf.PDF (7 pages)(62592 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	/Rachel L. Chanin/
Name	Rachel L. Chanin
Date	04/21/2011

Notice of Opposition
Serial No. 85/158489

1. On information and belief, applicant is a Limited Liability Company under the laws of Virginia with its principal place of business at 499 Washington Blvd, Jersey City, New Jersey 07310.

2. Applicant filed Serial No. 85/158489 on October 21, 2010, seeking registration of VITAL WELLNESS for “Dietary and nutritional supplements,” in International Class 005.

3. Threshold Enterprises is the owner of incontestable U.S. Trademark Registration No. 1,965,003 for WELLNESS FORMULA for “vitamins, dietary herbal supplements and nutritional supplements.” WELLNESS FORMULA was originally registered by Source Naturals, Inc., a wholly owned subsidiary of Threshold Enterprises, and was later assigned to Threshold Enterprises. This registration is valid, subsisting, uncancelled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FORMULA in commerce or in connection with the goods specified in the registration. Moreover, Registration No. 1,965,003 disclaims the exclusive right to use FORMULA apart from the mark WELLNESS.

4. Since at least twenty-five years prior to applicant’s filing date for Serial No. 85/158489, Threshold Enterprises adopted and has continuously used its WELLNESS FORMULA mark in connection with vitamins, dietary supplements and nutritional supplements. WELLNESS FORMULA is a prominent national brand, with products available nationwide in all major markets.

5. Threshold Enterprises is the owner of U.S. Trademark Registration No. 3,933,241 for WELLNESS FIZZ for “dietary supplements, nutritional supplements, food supplements and herbal supplements.” This registration is valid, subsisting, uncancelled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FIZZ in commerce or in

connection with the goods specified in the registration.

6. Since at least three years prior to applicant's filing date for Serial No. 85/158489, Threshold Enterprises adopted and has continuously used its WELLNESS FIZZ mark in connection with dietary supplements, nutritional supplements, food supplements, and herbal supplements. WELLNESS FIZZ is a prominent national brand, with products available nationwide in all major markets.

7. Furthermore, Threshold Enterprises has adopted and used numerous other marks containing WELLNESS in connection with health and nutritional products since at least as early as 1997. Current products in its Wellness Family of Products include a variety of nutritional supplements and health products in liquids, tablets, capsules, powders, effervescent products, sprays, oils and other forms. These include:

WELLNESS BREATHE FREE

WELLNESS C-1000

WELLNESS COLD & FLU

WELLNESS COLLOIDAL SILVER

WELLNESS COLLOIDAL SILVER NASAL SPRAY

WELLNESS COLLOIDAL SILVER THROAT SPRAY

WELLNESS COUGH SYRUP

WELLNESS COUGH SYRUP FOR KIDS

WELLNESS EARACHE

WELLNESS ELDERBERRY EXTRACT

WELLNESS ELDERBERRY LIQUID EXTRACT

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WELLNESS FLUGUARD

WELLNESS GARLICELL

WELLNESS HERBAL KIDS LIQUID

WELLNESS HERBAL RESISTANCE LIQUID

WELLNESS HERBAL THROAT SPRAY

WELLNESS IMMUNOW

WELLNESS IMMUNE CHEWABLE

WELLNESS LARCH EXTRACT

WELLNESS MULTIPLE

WELLNESS OIL OF OREGANO

WELLNESS OLIVE LEAF

WELLNESS TRANSFER FACTOR

WELLNESS ZINC LOZENGES

WELLNESS ZINC THROAT SPRAY

8. Threshold Enterprises has invested substantial amounts of time, effort and money in developing, marketing, promoting and protecting its WELLNESS FORMULA trademark and its other WELLNESS marks throughout the United States in the field of herbal and nutritional supplements. As such, in addition to the protection afforded Threshold Enterprises by its federal trademark registration of WELLNESS FORMULA and/or other WELLNESS marks, Threshold Enterprises has extensive, non-registered statutory and common law rights in and to WELLNESS FORMULA and its other WELLNESS marks.

9. Applicant has no license, consent or permission from Threshold Enterprises to use

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or register VITAL WELLNESS.

10. Applicant's mark so resembles Threshold Enterprises' WELLNESS FORMULA mark and other WELLNESS marks that it is likely to cause confusion, or to cause mistake or deceive within the meaning of Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C. §1052(d); and more particularly, applicant's mark and use thereof are likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that the goods/services in Serial No. 85/158489 originate with or are affiliated with Threshold Enterprises, or otherwise are authorized, licensed or sponsored by Threshold Enterprises.

11. By reasons of the foregoing, Threshold Enterprises will be gravely damaged by the registration of VITAL WELLNESS for the goods in Serial No. 85/158489, because registration of that mark would be in violation of Threshold Enterprises' trademark rights.

WHEREFORE, Threshold Enterprises prays that this Notice of Opposition be sustained in favor of Threshold Enterprises and that Serial No. 85/158489 be denied registration.

You are hereby authorized to deduct the \$300 fee for filing this Opposition, and any additional fees necessary to process this Notice, from Deposit Account No. 502387 in the name of Arnold Porter LLP.

Respectfully submitted,

THRESHOLD ENTERPRISE LTD.



Dated: April 21, 2011

Rachel Chanin
ARNOLD & PORTER LLP
One Embarcadero Center
22nd Floor
San Francisco, California 94111

Notice of Opposition
Serial No. 85/158489

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Attorneys for Opposer

PROOF OF SERVICE

I am over eighteen years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, 22nd Floor, San Francisco, California 94111. I am readily familiar with the practice of this office for collection and processing of correspondence for mail delivery, and they are deposited that same day in the ordinary course of business.

On April 21, 2011, I served the following document(s):

NOTICE OF OPPOSITION

I served the document(s) on the following person(s):

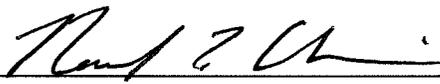
Christopher J. Day
Law Offices of Christopher Day
9977 North 90th Street, Suite 155
Scottsdale, Arizona USA 85258

- (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 21, 2011

Signature: _____



Type or Print Name: Rachel L. Chanin