

ESTTA Tracking number: **ESTTA421313**

Filing date: **07/22/2011**

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	Hero Nutritional Products, LLC
Granted to Date of previous extension	07/30/2011
Address	991 Calle Negocio San Clemente, CA 92673 UNITED STATES

Attorney information	Paul N. Tauger Hero Nutritional Products, LLC 991 Calle Negocio San Clemente, CA 92673 UNITED STATES ptauger@heronutritionals.com Phone:949 498 2280
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Applicant Information

Application No	85225656	Publication date	05/31/2011
Opposition Filing Date	07/22/2011	Opposition Period Ends	07/30/2011
Applicant	Marvel Characters, Inc. 1600 Rosecrans Avenue Manhattan Beach, CA 90266 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2005/08/31 First Use In Commerce: 2005/08/31 All goods and services in the class are opposed, namely: Dietary supplements; Mineral supplements; Vitamins

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.	3992795	Application Date	10/28/2010
Registration Date	07/12/2011	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONAL PRODUCTS		

Design Mark	HERO NUTRITIONAL PRODUCTS		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1995/06/01 First Use In Commerce: 1995/06/01 Nutritional supplements, namely, vitamins, minerals, probiotics, prebiotics and herbals		

U.S. Registration No.	2995645	Application Date	03/18/2004
Registration Date	09/13/2005	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONALS		
Design Mark	HERO NUTRITIONALS		
Description of Mark	the mark is presented in standard characters, without claim to any particular font, style, size or color		
Goods/Services	Class 005. First use: First Use: 2004/02/15 First Use In Commerce: 2004/02/15 Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements		

U.S. Registration No.	3029888	Application Date	03/18/2004
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONALS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 2005/02/04 First Use In Commerce: 2005/02/04 Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements
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Attachments	85163745#TMSN.jpeg (1 page)(bytes) 76581733#TMSN.gif (1 page)(bytes) 76581734#TMSN.gif (1 page)(bytes) Notice of Opposition with Attachments re TM Marvel Heroes 7.21.11.pdf (15 pages)(3478391 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	/paul n. tauger/
Name	Paul N. Tauger
Date	07/22/2011

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

Hero Nutritional Products, LLC,

Opposer,

v.

Marvel Characters, Inc.,

Applicant

Opposition No.: ESTTA413481

Mark: MARVEL HEROES

Serial No.: 85225656

NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Opposer, Hero Nutritional Products, LLC (“Hero”) is a California Limited Liability Company, residing at 991 Calle Negocio, San Clemente, CA 92673. To the best of Opposer’s knowledge, the name and address of the current owner of the above-identified Applicant is Marvel Characters, Inc., an incorporated Company, residing at 1600 Rosecrans Avenue, Manhattan Beach, CA 90266.

The Opposer believes that it is and will be damaged by registration of the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is the owner of:

a. Registration Number 3,992,795 for the mark HERO NUTRITIONAL PRODUCTS, for which an application was filed on October 28, 2010.

Previous registration no. 2995645 and registration no. 3029888. Hero has had

common law rights since 1995 for the mark Hero Nutritional Products, for which an application was filed on October 28, 2010

- b. Registration No. 2,9,956,45 for the mark HERO NUTRITIONALS, for which an application was filed on March 18, 2004
- c. Registration No. 3,029,888 for the mark HERO NUTRITIONALS, for which an application was filed on March 18, 2004 (Collectively, the “Hero Marks”)

Two copies of a current printout of information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of the registrations are attached herewith.

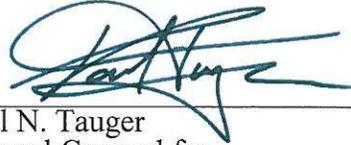
- 2. Opposer is a producer of well-known nutraceuticals, vitamins and dietary supplements. It has used its Marks since as early as June 1995, and has substantially and continuously used the Marks since that time in connection with its products. Opposer is renown/well-known for its products associated with the Marks. Due to Opposer’s marketing efforts, the goods associated with the Marks are well known and widely recognized by consumers and third parties.
- 3. Applicant is not entitled to registration of the alleged Mark MARVEL HEROES on the grounds that pursuant to §2(d) the Mark may be likely to cause mistake, to deceive, or cause confusion with the Hero Marks.

Opposer’s Hero Marks are all earlier than Applicant’s admitted date of first use and its filing date of August 31, 2005. Applicant’s goods are related to Opposer’s goods in the identical international class, Opposer and Applicant market in the same channels of trade, and market to the same consumers. Accordingly, as Applicant’s proposed mark so resembles Opposer’s Marks as to be likely to cause confusion, mistake or deceive, Opposer will be damaged by the registration of Applicant’s mark.

WHEREFORE, Opposer Hero requests that this Notice of Opposition be granted in its favor, and that Serial No. 85225656 be denied registration on the Principal or Supplemental Register.

Dated: 7/21/11

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Paul Tauger", is written over a horizontal line.

Paul N. Tauger
General Counsel for
Hero Nutritional Products, LLC



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HERO NUTRITIONAL PRODUCTS

Word Mark HERO NUTRITIONAL PRODUCTS

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements, namely, vitamins, minerals, probiotics, prebiotics and herbals. FIRST USE: 19950601. FIRST USE IN COMMERCE: 19950601

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85163745

Filing Date October 28, 2010

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition April 26, 2011

Registration Number **3992795**

Registration Date July 12, 2011

Owner (REGISTRANT) Hero Nutritional Products LLC LIMITED LIABILITY COMPANY CALIFORNIA
991 Calle Negocio Newport Beach CALIFORNIA 92673

Attorney of Record Paul N. Tauger

Prior Registrations 2995645;3029888

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITIONAL PRODUCTS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements, namely, vitamins, minerals, probiotics, prebiotics and herbals. FIRST USE: 19950601. FIRST USE IN COMMERCE: 19950601
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HERO NUTRITIONALS

Word Mark	HERO NUTRITIONALS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements. FIRST USE: 20040215. FIRST USE IN COMMERCE: 20040215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	76581733
Filing Date	March 18, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 4, 2005
Registration Number	2995645
Registration Date	September 13, 2005
Owner	(REGISTRANT) Hero Nutritional Products, L.L.C. LIMITED LIABILITY CORPORATION CALIFORNIA 991 Calle Negocio San Clemente CALIFORNIA 92673
Attorney of Record	Paul N. Tauger
Prior Registrations	2694678;2768711
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITIONALS" APART FROM THE MARK AS SHOWN
Description of Mark	the mark is presented in standard characters, without claim to any particular font, style, size or color

Type of Mark TRADEMARK
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Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 76581733

Filing Date March 18, 2004

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition January 4, 2005

Registration Number **2995645**

Registration Date September 13, 2005

Owner (REGISTRANT) Hero Nutritional Products, L.L.C. LIMITED LIABILITY CORPORATION CALIFORNIA 991 Calle Negocio San Clemente CALIFORNIA 92673

Attorney of Record Paul N. Tauger

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Word Mark HERO NUTRITIONALS
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements. FIRST USE: 20050204. FIRST USE IN COMMERCE: 20050204
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 05.03.25 - Leaf, single; Other leaves
 26.09.21 - Squares that are completely or partially shaded
Serial Number 76581734
Filing Date March 18, 2004
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition June 14, 2005
Registration Number 3029888
Registration Date December 13, 2005
Owner (REGISTRANT) Hero Nutritional Products, L.L.C. LIMITED LIABILITY CORPORATION CALIFORNIA 991 Calle Negocio San Clemente CALIFORNIA 92673
Attorney of Record Paul N. Tauger
Prior Registrations 2694678;2768711
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Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.03.25 - Leaf, single; Other leaves 26.09.21 - Squares that are completely or partially shaded
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