

ESTTA Tracking number: **ESTTA467166**

Filing date: **04/16/2012**

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	UNITED STATES NUTRITION, INC.
Granted to Date of previous extension	05/05/2012
Address	2100 Smithtown Avenue Legal Dept. Ronkonkoma, NY 11779 UNITED STATES

Attorney information	Lee Grosskreuz Hechtel 2100 Smithtown Avenue Legal Dept. Ronkonkoma, NY 11779 UNITED STATES lhechtel@nbt.com Phone:6312187335
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Applicant Information

Application No	85449715	Publication date	03/06/2012
Opposition Filing Date	04/16/2012	Opposition Period Ends	05/05/2012
Applicant	Hamida Pharma Inc. 25541 Arctic Ocean Drive Lake Forest, CA 92630 UNITED STATES		

Goods/Services Affected by Opposition

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

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.	2055378	Application Date	06/14/1996
Registration Date	04/22/1997	Foreign Priority Date	NONE
Word Mark	FLEX-A-MIN		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1996/01/01 First Use In Commerce: 1996/01/01 dietary supplement to aid joint health
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Attachments	FLEXOPRIN Notice of Opp.pdf (5 pages)(158465 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	/lgh/
Name	Lee Grosskreuz Hechtel
Date	04/16/2012

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

In re Application Serial No. 85/449715
Filed: October 18, 2011
Published for Opposition on March 6, 2012
Trademark: FLEXOPRIN

United States Nutrition, Inc., :
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 Opposer, :
 :
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 vs. :
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 Hamida Pharma Inc., :
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 :
 Applicant. :
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 :

Opposition No.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Certificate of EFS-Web Transmission

I hereby certify that this correspondence is being transmitted to the TTAB electronic filing system on April 13, 2012.

Lee Grosskreuz Hechtel
(printed name)

Signature: /LGH/

NOTICE OF OPPOSITION

United States Nutrition, Inc., (“Opposer”), is a Delaware corporation with a principal place of business at 2100 Smithtown Avenue, Ronkonkoma, New York 11779, believes that it will be damaged by the registration of mar shown in Serial No. 85/449715 to Hamida Pharma Inc (“Applicant”), which application was published for opposition on March 6, 2012, and hereby

opposes, through its attorneys, the registration of said mark in International Class 5.

As grounds for opposition, it is alleged that:

1. Opposer is a Delaware corporation with a principal place of business at 2100 Smithtown Avenue, Ronkonkoma, New York 11779;

2. Since long prior to October 18, 2011, the filing date of the above-referenced application, Opposer and its predecessors-in-interest and related companies (collectively referred to herein as “Opposer”) have been engaged in the business of developing and selling a wide variety of vitamin, mineral, and nutritional supplements.

3. Since long prior to October 18, 2011, and at least as early as January 1, 1996, Opposer has continuously used the mark FLEX-A-MIN in connection with dietary supplements.

4. Opposer is the owner of the following registration on the Principal Register of the United States Patent and Trademark Office for the FLEX-A-MIN mark:

<u>Mark</u>	<u>Reg. No.</u>	<u>Issue Date</u>	<u>Goods</u>
FLEX-A-MIN	2055378	04/22/1997	Class 5: dietary supplement to aid joint health

5. The above-referenced registration is valid and in full force and effect. The Principal Register registration is *prima facie* evidence of the validity of the registration, of Opposer’s ownership of the mark and of its exclusive right to use the mark in commerce. Moreover, the registration is constructive notice to Applicant and all other of Opposer’s claim of ownership of the mark.

6. Opposer has spent significant sums advertising and publicizing the FLEX-A-MIN

mark for products widely and extensively sold throughout the United States. As a result of its extensive sales and its advertising and promotional efforts for products sold under the FLEX-A-MIN mark, Opposer has developed tremendous goodwill and widespread recognition as the source of products sold under the FLEX-A-MIN mark, and such mark has become famous and distinctive, since prior to the filing date of the above-referenced application.

7. The goods identified in Applicant's application are related to the goods marketed by Opposer under the FLEX-A-MIN mark, and to the goods listed in Opposer's registration, all of such goods being likely to travel through similar channels of trade.

8. Applicant's mark is confusingly similar to Opposer's FLEX-A-MIN mark whereby use of Applicant's mark on the goods recited in Applicant's application will create a likelihood of confusion, mistake or deception among the trade and the purchasing public.

9. The registration of Applicant's mark in connection with the goods specified in Applicant's application would be in conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer's prior use of and registration of its mark.

10. Opposer, as the owner of a valid federal trademark registration and as the prior user of such mark, will be damaged if registration of Applicant's mark is granted.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained, that the above-identified application be rejected and that the registration of the mark shown in Application Serial No. 85/449715 be refused.

Dated: April 13, 2012

Respectfully submitted,
United States Nutrition, Inc.

By: 

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NBTY, Inc.
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Ronkonkoma, NY 11779
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Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** has been served via first-class mail this 13th day of April, 2012 upon the following:

Natasha Lin, CEO
HAMIDA PHARMA INC.
25541 ARCTIC OCEAN DR
LAKE FOREST, CA 92630-8827


Lee Grosskreuz Hechtel