

ESTTA Tracking number: **ESTTA495434**

Filing date: **09/19/2012**

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

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|---|--|
| Name | Re-Body, LLC |
| Granted to Date of previous extension | 09/19/2012 |
| Address | 700 S. Florida Avenue #512 Tampa, FL 33602 UNITED STATES |
| Party who filed Extension of time to oppose | Re-Body |
| Relationship to party who filed Extension of time to oppose | The "LLC" designation was erroneously omitted from the original extension of time. Re-Body is an LLC using the formal name "Re-Body, LLC." |

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| Attorney information | Kathleen E. McCarthy King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036 UNITED STATES nytrademarks@kslaw.com, kmccarthy@kslaw.com, ebrown@kslaw.com Phone:212-556-2345 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 85516396 | Publication date | 05/22/2012 |
| Opposition Filing Date | 09/19/2012 | Opposition Period Ends | 09/19/2012 |
| Applicant | Nutri-Fusion Systems, Inc. 9854 South 700 East, #2 Sandy, UT 84070 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements containing safflower oil as a major ingredient for use in weight management and dieting |
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Grounds for Opposition

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

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 4155036 | Application Date | 02/07/2011 |
| Registration Date | 06/05/2012 | Foreign Priority Date | NONE |
| Word Mark | SAFSLIM | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2011/02/22 First Use In Commerce: 2011/02/22 Dietary supplements for weight-loss containing as a primary ingredient safflower oil, excluding powdered drink mixes, shakes, ready-to-drink beverages, and nutritional bars | | |

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| Attachments | 85235617#TMSN.jpeg (1 page)(bytes) Saftin Opposition 9 19 2012.pdf (5 pages)(18147 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 | /Kathleen E. McCarthy/ |
| Name | Kathleen E. McCarthy |
| Date | 09/19/2012 |

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

| | | |
|----------------------------|---|-------------------|
| RE-BODY, LLC, |) | |
| |) | |
| Opposers, |) | OPPOSITION NUMBER |
| |) | |
| v. |) | |
| |) | |
| NUTRI-FUSION SYSTEMS, INC. |) | _____ |
| |) | |
| Applicant. |) | |

OPPOSITION

RE-BODY, LLC (“Re-Body”), a Delaware limited liability company having its principal place of business at 700 South Florida Avenue #512, Tampa, Florida, 33602 believes that it would be damaged by registration of the mark SAFTIN (“Applicant’s Alleged Mark”) for “dietary and nutritional supplements containing safflower oil as a major ingredient for use in weight management and dieting” in International Class 5 (“Applicant’s Goods”), which mark is the subject of application Serial Number 85/516,396 (the “Application”), filed on January 13, 2012 by Nutri-Fusion Systems, Inc. (“Applicant”) and published for opposition in the Official Gazette of May 22, 2012, and by and through its undersigned attorneys and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, hereby opposes the same.

The grounds for this Opposition are as follows:

1. By the Application, Applicant seeks to register Applicant’s Alleged Mark as a mark for dietary and nutritional supplements containing safflower oil as a major ingredient for use in weight management and dieting in International Class 5 on an intent-to-use-basis. The

earliest priority date applicable to Applicant's Alleged Mark is the Application filing date of January 13, 2012.

2. Opposer Re-Body has engaged in the business of manufacturing, distributing, marketing and selling dietary supplements for weight-loss containing as a primary ingredient safflower oil in International Class 5 ("Opposer's Goods") under the mark SAFSLIM ("Opposer's Mark") since at least as early as February 2011.

3. Opposer Re-Body has used in interstate commerce and is, and has been at all times pertinent hereto, the owner of all right, title, and interest in and to Opposer's Mark for Opposer's Goods.

4. Opposer Re-Body is the owner of federal trademark registration number 4,155,036, issued on June 5, 2012 for the mark SAFSLIM in International Class 5.

5. Opposer has continuously and extensively promoted Opposer's SAFSLIM products since at least as early as February 2011. Opposer's SAFSLIM products are extremely popular and often sell-out when offered on home shopping television channels and have been promoted by celebrity spokespersons on various television shows.

6. As a result of the widespread and extensive use and promotion by Opposer of Opposer's Mark, and the success of Opposer's SAFSLIM product, Opposer's Mark is of great value to Opposer in connection with the offering of Opposer's Goods. Opposer's Mark serves to identify and distinguish Opposer's Goods from the goods, services, and businesses of others, symbolizes the goodwill of Opposer's business, and is well known.

7. Opposer's Mark has priority of use and priority of rights in the United States over Applicant's Alleged Mark. SAFSLIM and SAFTIN are confusingly similar in sight, sound and connotation.

8. Applicant's Goods and Opposer's Goods are directly competitive and of similar types, are offered or may be offered through the same, substantially the same, and/or related channels of trade, to the same, substantially the same, and/or related classes of purchasers and are or may be advertised, marketed and promoted through the same media channels.

9. Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

10. Applicant's Alleged Mark so closely resembles Opposer's Mark that potential purchasers of the goods intended to be offered under Applicant's Alleged Mark would be likely to believe that Opposer is the source of such goods, or that Opposer has authorized, sponsored, approved of, or in some other manner associated itself with Applicant's Goods, thereby creating a likelihood of confusion, deception or mistake, all to the damage of Opposer.

11. Opposer would be damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's established and superior rights in Opposer's Mark and the registration of Opposer's Mark.

12. Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

The Patent and Trademark Office is authorized to deduct the filing fees of three hundred dollars (\$300.00), and any other fees necessary in connection with the filing of this Opposition, from the deposit account of King & Spalding LLP, Opposers' undersigned counsel, account number 50-3732.

WHEREFORE, Opposer Re-Body, LLC. respectfully prays that the application of Nutru-Fusion Systems, Inc. Serial Number 85/516,396, filed on January 13, 2012 be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 19th day of September, 2012.

KING & SPALDING LLP

/Kathleen E. McCarthy/
Kathleen E. McCarthy

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New York, NY 10036
Telephone: 212-556-2100
Facsimile: 212-556-2222

Attorney for Opposer
RE-BODY, LLC

CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that I have this day served the foregoing Opposition on the Applicant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the attorney of record for the Application as follows:

ALAN J. HOWARTH
CLAYTON, HOWARTH & CANNON, P.C.
PO BOX 1909
SANDY, UTAH 84091-1909
UNITED STATES

This 19th day of September, 2012.

/Kathleen E. McCarthy/
Kathleen E. McCarthy