

ESTTA Tracking number: **ESTTA516347**

Filing date: **01/16/2013**

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	Herb Pharm, LLC
Granted to Date of previous extension	01/16/2013
Address	20260 Williams Highway Williams, OR 97544 UNITED STATES
Attorney information	Tyler J. Volm Elliott, Ostrander & Preston, P.C. 707 SW Washington Street, Suite 1500 Portland, OR 97205 UNITED STATES tyler@eoplaw.com, john@eoplaw.com, karen@eoplaw.com, niel@eoplaw.com Phone:503-224-7112

Applicant Information

Application No	85447463	Publication date	09/18/2012
Opposition Filing Date	01/16/2013	Opposition Period Ends	01/16/2013
Applicant	Sunflower Meadows Herb Farm LLC P.O. Box 351 Kanosh, UT 84637 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Herbal supplements and medicinal herbal preparations
Class 030. All goods and services in the class are opposed, namely: Herbal tea and herbal food beverages
Class 032. All goods and services in the class are opposed, namely: Herbal juices

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.	2142522	Application Date	02/19/1997
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Registration Date	03/10/1998	Foreign Priority Date	NONE
Word Mark	HERB PHARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 herbal, dietary and nutritional supplements [and vitamins]		

U.S. Registration No.	2612435	Application Date	08/02/2001
Registration Date	08/27/2002	Foreign Priority Date	NONE
Word Mark	HERB PHARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 Herbal, dietary and nutritional supplements		

Attachments	76294689#TMSN.gif (1 page)(bytes) NOTICE OF OPPOSITION.pdf (4 pages)(84728 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	/Tyler J. Volm/
Name	Tyler J. Volm
Date	01/16/2013

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

HERB PHARM, LLC,

Opposer,

v.

SUNFLOWER MEADOWS HERB
FARM LLC,

Applicant.

Opposition No.: _____

In re Trademark Application No. 85/447,463

Filed: October 14, 2011

For the Mark: HERB FARM AND DESIGN

Published in the Official Gazette:

September 18, 2012

NOTICE OF OPPOSITION

Pursuant to 15 USC 1052(d), Herb Pharm, LLC, an Oregon Limited Liability Company with a principal place of business at 20260 Williams Hwy, Williams, Oregon 97544, U.S.A. (“Herb Pharm”) opposes registration of Applicant Sunflower Meadows Herb Farm LLC’s application for the mark “HERB FARM (and Design),” Application Serial Number 85/447,463 in Classes 5, 30 & 32 (“Applicant’s Mark”). Registration of Applicant’s Mark will damage Herb Pharm because it will cause confusion as to the source of goods sold under the proposed trademark.

As grounds for opposition, it is alleged that:

1. Herb Pharm is the owner of the mark “HERB PHARM” (“the Herb Pharm Mark”), including USPTO Registration Nos. 2,142,522 (“HERB PHARM”) and 2,612,435 (“HERB PHARM and Design”), for herbal, dietary and nutritional supplements in Class 5. The Herb Pharm registrations are incontestable under Lanham Act Section 15.

2. Herb Pharm has been engaged in the business of selling herbal, dietary and nutritional supplements under the Herb Pharm Mark for over three decades. Herb Pharm has

used the Herb Pharm Mark in interstate commerce in connection with the above goods since long before Applicant's filing date for Applicant's Mark.

3. Herb Pharm's use of the Herb Pharm Mark has been valid and continuous since the date of first use, and it has not been abandoned. The Herb Pharm Mark is symbolic of extensive goodwill and consumer recognition built up by Herb Pharm through substantial amounts of time and effort in advertising and promotion, and the public has come to associate the Herb Pharm Mark with Herb Pharm. As such, the public has come to know the Herb Pharm Mark as an indicator of herbal, dietary and nutritional supplements that originate from Herb Pharm.

4. The mark proposed for registration by Applicant is confusingly similar to the Herb Pharm Mark and Applicant's use thereof may cause a potential consumer to be confused or mistaken or deceived as to the source of the goods of the Applicant and its connection or affiliation with Herb Pharm.

5. Applicant's Mark is similar in sound and commercial impression to the Herb Pharm Mark. The word combination HERB FARM in the Applicant's Mark is the more dominant portion of the mark, and is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods. The words in Applicant's Mark should be accorded greater weight than the design in determining whether the marks are confusingly similar. The parties' marks create the same overall impression.

6. The word combination HERB FARM in Applicant's Mark and HERB PHARM in the Herb Pharm Mark are phonetic equivalents, and there is a high likelihood that consumers encountering the marks would be confused into believing that the goods offered under such marks come from the same source.

7. The parties' goods sold under their respective marks are the same or closely related. Applicant has applied to use Applicant's Mark in connection with "herbal supplements and preparations," "herbal beverages," and "herbal juices." Herb Pharm uses the Herb Pharm Mark in connection with "herbal, dietary and nutritional supplements." Because both the Applicant and Herb Pharm have included herbal supplements in their identifications of goods, the goods of the parties are to be considered identical. When confronted with these identical or closely related goods bearing confusingly similar or phonetically equivalent marks, a consumer is likely to have the mistaken belief that the goods originate from the same source.

8. On information and belief, the parties are likely to market and sell their goods in the same channel of trade. Herb Pharm markets its herbal, dietary and nutritional supplements under the Herb Pharm Mark through established retail outlets and online through its website www.herb-pharm.com. Although not yet in use, it can be assumed that the trade channels for Applicant's proposed goods will be identical or similar, including online sales through a website established at its registered domain www.sunflowermeadowsherbfarm.com.

9. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark, and such registration would damage Herb Pharm.

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WHEREFORE, Herb Pharm requests that the Board reject application Serial No. 85/447,463, and that the mark therein sought for the goods specified in Classes 5, 30 & 32 be denied and refused.

Respectfully submitted,

By: /Tyler J. Volm/
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Attorneys for Opposer Herb Pharm, LLC

CERTIFICATE OF SERVICE

I certify that I served the foregoing **NOTICE OF OPPOSITION** on the Applicant on January 16, 2013 by mailing a true and correct copy thereof, addressed to Applicant's attorney of record at the address shown below, and deposited in the United States mail on said day with sufficient postage, in a sealed envelope, at the post office at Portland, Oregon:

John J. Scally, Jr.
Anthony Palumbo
Drinker Biddle & Reath
1500 K Street NW
Washington, DC 20005-1209

ELLIOTT, OSTRANDER & PRESTON, P.C.

By: /Tyler J. Volm/
Tyler J. Volm, OSB No. 08499