

ESTTA Tracking number: **ESTTA540479**

Filing date: **05/29/2013**

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	Applied Food Biotechnology, Inc. d/b/a AFB International		
Entity	Corporation	Citizenship	Missouri
Address	3 Research Park Drive St. Charles, MO 63304 UNITED STATES		

Attorney information	Thomas J. Mango Cantor Colburn LLP 20 Church Street, 22nd Floor Hartford, CT 06103 UNITED STATES tmango@cantorcolburn.com, cwilkinson@cantorcolburn.com, ABeaudoin@CantorColburn.com Phone:860-286-2929		
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Applicant Information

Application No	85634992	Publication date	04/30/2013
Opposition Filing Date	05/29/2013	Opposition Period Ends	05/30/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	Southbrook Farms Limited 581 Niagara Stone Road, RR4 Niagara-on-the-Lake Ontario, L0S1J0 CANADA		

Goods/Services Affected by Opposition

Class 005. First Use: 2011/07/00 First Use In Commerce: 2011/07/00
All goods and services in the class are opposed, namely: Nutritional and dietary supplements, namely, grape skin powder; nutritional food additives for medical purposes in the nature of natural food extracts in the form of a powder derived from grape skins

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.	1190152	Application Date	10/29/1979
Registration Date	02/16/1982	Foreign Priority Date	NONE
Word Mark	BIOFLAVOR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1976/12/30 First Use In Commerce: 1976/12/30 FLAVORING ADDITIVE FOR PET FOOD

Attachments	Notice of Opposition.PDF(825552 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	/Thomas J. Mango/
Name	Thomas J. Mango
Date	05/29/2013

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

In the Matter of Trademark Application Serial No.	85634992
Filed:	May 24, 2012
Mark:	BIOFLAVIA
Published in the Official Gazette:	April 30, 2013

Applied Food Biotechnology, Inc.
d/b/a AFB International,

Opposer,

v.

Southbrook Farms Limited,

Applicant.

Opposition No: _____

NOTICE OF OPPOSITION

In the matter of United States Trademark Application Serial No. 85634992, filed May 24, 2012 (“Application”), for registration of the mark BIOFLAVIA (“BIOFLAVIA Mark”), by Southbrook Farms Limited (“Applicant”), covering goods and services in International Class 5, published for opposition in the United States Patent and Trademark Office’s Official Gazette on April 30, 2013, Opposer, Applied Food Biotechnology, Inc. d/b/a AFB International, (“Opposer” or “AFB”) believes it will be damaged by such registration, and hereby opposes the registration of the Application.

The grounds for the opposition are as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Missouri, with a principal place of business located at 3 Research Park Drive, St. Charles, Missouri, 63304.

2. Opposer is the global science and technology leader in pet food palatability, and is dedicated to improving the health and wellness of companion animals in the United States, and worldwide, through superior products and services.

3. By applying superior scientific approaches and advanced technology, Opposer researches, develops, manufactures, and sells products that make pet food more appealing to pets and their owners.

4. Opposer is headquartered in Missouri, and has offices and production capabilities throughout the U.S., and around the globe.

5. Opposer owns both common law and federally-registered rights to its well-known BIOFLAVOR trademark (“BIOFLAVOR Mark”) used on and in connection with flavoring additives for pet food (“Opposer’s Goods”). Opposer began using the BIOFLAVOR Mark at least as early as December 30, 1976 anywhere and in interstate commerce.

6. Opposer owns United States Trademark Registration No. 1190152 for the mark BIOFLAVOR, filed on October 29, 1979, and registered on February 16, 1982, for “flavoring additive for pet food” in International Class 30, with a date of first use in commerce of December 30, 1976. A true and correct copy of a printout from the United States Patent and Trademark Office’s Trademark Status and Document Retrieval database is attached hereto as “Exhibit A”.

7. The BIOFLAVOR Mark is prominently featured in Opposer’s advertising, marketing, and promotional materials for the Opposer’s Goods, and in connection with Opposer’s Goods that are offered for purchase throughout the U.S., and worldwide, and on Opposer’s website located at <http://www.afbinternational.com>.

8. As a result of Opposer's substantially exclusive and continuous use of the BIOFLAVOR Mark in connection with Opposer's Goods, and having expended considerable effort and expense in promoting the goods associated with the BIOFLAVOR Mark, the BIOFLAVOR Mark and the goods bearing this mark have come to be recognized as associated with Opposer and the BIOFLAVOR Mark has developed substantial goodwill and a positive reputation among the industry, the trade, and consumers.

9. The BIOFLAVOR Mark distinguishes Opposer's Goods from those of its competitors. As a result, relevant consumers readily recognize, associate, identify, and distinguish Opposer's products from those of others.

10. On information and belief, the Applicant is a corporation organized and existing under the laws of the Canada, with a principal place of business located at 581 Niagara Stone Road, RR4, Niagara-on-the-Lake, Ontario LOS1J0, Canada. Applicant has no relationship with Opposer.

11. On or about May 24, 2012, Applicant filed the Application (Serial No. 85634992). As currently pending, the Application covers "Nutritional and dietary supplements, namely, grape skin powder; nutritional food additives for medical purposes in the nature of food extracts in the form of a powder derived from grape skins" in International Class 5.

12. The Application was filed without Opposer's authorization, consent, or prior knowledge.

13. The Application was filed based on use under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a), and under Section 44(e) of the Lanham Act, 15 U.S.C. §1126, claiming a first use in commerce date of July 2011.

14. The BIOFLAVOR Mark, including Opposer's common law rights, predates the Application and any claimed use in the Application. Opposer therefore has rights that are senior to any rights that may be claimed by the Applicant.

COUNT I
LIKELIHOOD OF CONFUSION

15. Opposer incorporates paragraphs 1 – 14 by reference and realleges the same as if originally set forth herein.

16. There is a likelihood of confusion between the BIOFLAVOR Mark and the goods Opposer offers under the BIOFLAVOR Mark, and the BIOFLAVIA Mark and the goods the Applicant offers under the BIOFLAVIA Mark.

17. In particular, the BIOFLAVIA Mark is nearly identical to the Opposer's BIOFLAVOR Mark, and, therefore, the BIOFLAVIA Mark is confusingly similar to Opposer's BIOFLAVOR Mark.

18. The minor difference between the marks, with the BIOFLAVOR Mark ending in "OR" and the BIOFLAVIA Mark ending in "IA", does not avoid a likelihood of confusion because Applicant is using the BIOFLAVIA Mark in connection with goods that are overlapping and substantially similar to the Opposer's Goods offered in connection with the BIOFLAVOR Mark.

19. Given the filing date of the Application, the Applicant was clearly exposed to and aware of the Opposer and the BIOFLAVOR Mark before filing the Application. Applicant's selection of a mark that is confusingly similar to the BIOFLAVOR Mark was no coincidence, and was intended to trade off of the substantial reputation and goodwill of the BIOFLAVOR Mark.

20. As a result of the similarity between the BIOFLAVIA Mark and the BIOFLAVOR Mark and the respective goods, registration of the BIOFLAVIA Mark would be likely to cause confusion, mistake, and/or deception of purchasers as to the source of the parties' respective goods.

21. As a result of the similarity between the BIOFLAVIA Mark and the BIOFLAVOR Mark, registration of the BIOFLAVIA Mark would be likely to cause confusion, mistake, and/or deception as to (a) the affiliation, connection, or association between Opposer and Applicant, and/or (b) the origin, sponsorship, or approval of the Applicant's goods by Opposer.

WHEREFORE, Opposer, Applied Food Biotechnology Inc. d/b/a AFB International, respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration for United States Trademark Application Serial No. 85634992.

Respectfully submitted,

**Applied Food Biotechnology Inc.
d/b/a AFB International**

Dated: May 29, 2013

By: /Thomas J. Mango/
Victor E. Libert, Esq.
Thomas J. Mango, Esq.
Cantor Colburn LLP
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Hartford, CT 06103-3207
Phone: 860-286-2929
Fax: 860-286-0115
vlibert@cantorcolburn.com
tmango@cantorcolburn.com

Attorneys for Applied Food Biotechnology Inc.
d/b/a AFB International

CERTIFICATE OF SERVICE

I, Thomas J. Mango, Esq., counsel to Applied Food Biotechnology, Inc. d/b/a AFB International in the above-captioned proceeding, hereby certify that, on the 29th day of May 2013, I served a copy of the foregoing Notice of Opposition, by first class mail, postage prepaid, upon the following individual, identified in the Application as the attorney of record and correspondent:

CHRISTINA D. YATES
DLA PIPER LLP (US)
401 B ST STE 1700
SAN DIEGO, CALIFORNIA 92101-4297

/Thomas J. Mango/
Thomas J. Mango

EXHIBIT A

Generated on: This page was generated by TSDR on 2013-05-29 14:15:27 EDT

Mark: BIOFLAVOR

US Serial Number: 73236965
Application Filing Date: Oct. 29, 1979
US Registration Number: 1190152
Registration Date: Feb. 16, 1982
Register: Principal
Mark Type: Trademark
Status: The registration has been renewed.
Status Date: Dec. 13, 2011
Publication Date: Nov. 24, 1981

Mark Information

Mark Literal Elements: BIOFLAVOR
Standard Character Claim: No
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *. * identify additional (new) wording in the goods/services.

For: FLAVORING ADDITIVE FOR PET FOOD

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 30, 1976

Use in Commerce: Dec. 30, 1976

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: APPLIED FOOD BIOTECHNOLOGY, INC.
DBA, AKA, Formerly: DBA AFB INTERNATIONAL
Owner Address: 3 RESEARCH PARK DRIVE
ST. CHARLES, MISSOURI 63304
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: MISSOURI

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Victor E. Libert

Docket Number: AFB0100TUS

Attorney Primary Email TM-CT@cantorcolburn.com
Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Victor E. Libert
CANTOR COLBURN LLP
20 Church Street
22nd Floor
Hartford, CONNECTICUT 06103
UNITED STATES

Phone: 860-286-2929

Fax: 860-286-0115

Correspondent e-mail: TM-CT@cantorcolburn.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 13, 2011	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	68973
Dec. 13, 2011	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	68973
Dec. 13, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68973
Nov. 11, 2011	TEAS SECTION 8 & 9 RECEIVED	
Feb. 09, 2009	REVIEW OF CORRESPONDENCE COMPLETE	67149
Feb. 02, 2009	PAPER RECEIVED	
Mar. 24, 2008	CASE FILE IN TICRS	
Jul. 12, 2007	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 12, 2007	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 06, 2007	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 22, 2003	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 15, 2002	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Jan. 15, 2002	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Nov. 01, 2001	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Sep. 09, 1987	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Mar. 12, 1987	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Feb. 16, 1982	REGISTERED-PRINCIPAL REGISTER	
Nov. 24, 1981	PUBLISHED FOR OPPOSITION	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Feb. 16, 2012

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: Not Found

Date in Location: Dec. 13, 2011

Assignment Abstract Of Title Information

Summary

Total Assignments: 5

Registrant: BIOPRODUCTS INCORPORATED

Assignment 1 of 5

Conveyance: MERGER AND CHANGE OF NAME 19870629DE

Reel/Frame: [0662/0028](#)

Pages: 0

Date Recorded: Jul. 27, 1989

Supporting Documents: No Supporting Documents Available

Assignor

Name: BIOPRODUCTS INCORPORATED, (MERGED INTO)

Execution Date: Jun. 25, 1987

Legal Entity Type: CORPORATION

State or Country Where Organized: OREGON

Name: BIOPRODUCTS MERGER CORPORATION, (CHANGED TO)

Execution Date: Not Found

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BIOPRODUCTS MERGER CORPORATION, (CHANGED TO)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Name: BIOPRODUCTS INCORPORATED

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Correspondent

Correspondent Name: HOWARD C. MISKIN

Correspondent Address: 350 FIFTH AVENUE
NEW YORK, NY 10118

Domestic Representative - Not Found

Assignment 2 of 5

Conveyance: MERGER 19881230DE

Reel/Frame: 0662/0024

Pages: 0

Date Recorded: Jul. 27, 1989

Supporting Documents: No Supporting Documents Available

Assignor

Name: BIOPRODUCTS INCORPORATED

Execution Date: Dec. 22, 1988

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: NUTRIUS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Correspondent

Correspondent Name: HOWARD C. MISKIN

Correspondent Address: 350 FIFTH AVENUE
NEW YORK, NY 10118

Domestic Representative - Not Found

Assignment 3 of 5

Conveyance: MERGER 19890410DE

Reel/Frame: 0664/0652

Pages: 0

Date Recorded: Aug. 10, 1989

Supporting Documents: No Supporting Documents Available

Assignor

Name: NUTRIUS INC.

Execution Date: Mar. 15, 1989

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BIOPRODUCTS INCORPORATED

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

Correspondent

Correspondent Name: HOWARD C. MISKIN

Correspondent Address: 350 FIFTH AVENUE
NEW YORK, NY 10118

Domestic Representative - Not Found
Assignment 4 of 5

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 3121/0078

Pages: 3

Date Recorded: May 20, 2005

Supporting Documents: assignment-tm-3121-0078.pdf

Assignor

Name: BIOPRODUCTS INCORPORATED

Execution Date: May 16, 2005

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: NUPETRA LLC

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 320 SPRINGSIDE DRIVE, SUITE 300
FAIRLAWN, OHIO 44333

Correspondent

Correspondent Name: HOWARD C. MISKIN

Correspondent Address: STOLL, MISKIN & BADIE
350 FIFTH AVENUE, SUITE 4710
NEW YORK, NY 10118

Domestic Representative - Not Found
Assignment 5 of 5

Conveyance: MERGER EFFECTIVE 02052007

Reel/Frame: 3554/0626

Pages: 5

Date Recorded: Jun. 05, 2007

Supporting Documents: assignment-tm-3554-0626.pdf

Assignor

Name: NUPETRA LLC

Execution Date: Feb. 03, 2007

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Assignee

Name: APPLIED FOOD BIOTECHNOLOGY, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: MISSOURI

Address: 3 RESEARCH PARK DRIVE
ST. CHARLES, MISSOURI 63304

DBA, AKA, TA, Formerly: DBA AFB INTERNATIONAL

Correspondent

Correspondent Name: GEORGE A. PELLETIER, JR.

Correspondent Address: 55 GRIFFIN ROAD SOUTH
CANTOR COLBURN LLP
BLOOMFIELD, CT 06002

Domestic Representative - Not Found