

ESTTA Tracking number: **ESTTA566094**

Filing date: **10/21/2013**

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	MatthiasRath
Granted to Date of previous extension	10/23/2013
Address	1260 Memorex Drive Santa Clara, CA 95050 UNITED STATES

Attorney information	John C. Blattner Dickinson Wright PLLC 350 S. Main St. Suite 300 Ann Arbor, MI 48104 UNITED STATES trademark@dickinsonwright.com, jblattner@dickinsonwright.com Phone:734-623-1698
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Applicant Information

Application No	85769860	Publication date	06/25/2013
Opposition Filing Date	10/21/2013	Opposition Period Ends	10/23/2013
Applicant	Chaban Wellness LLC 2100 Ponce de Leon Blvd., Suite 850 Coral Gables, FL 33134 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutraceuticals for use as a dietary supplement; protein supplement shakes and drink mixes
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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.	3967892	Application Date	07/06/2010
Registration Date	05/24/2011	Foreign Priority Date	NONE
Word Mark	YOU CAN		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 2011/01/20 First Use In Commerce: 2011/01/20 Nutritional supplements; dietary supplements; vitamins and mineral supplements</p> <p>Class 016. First use: First Use: 2011/01/20 First Use In Commerce: 2011/01/20 Newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements; educational materials, namely, newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements</p> <p>Class 041. First use: First Use: 2011/01/20 First Use In Commerce: 2011/01/20 Educational services, namely, conducting instruction in the form of classes, seminars, workshops, and conducting continuing education courses in the field of healthcare and nutritional supplements, and distributing course material in connection therewith</p> <p>Class 044. First use: First Use: 2011/01/01 First Use In Commerce: 2011/01/01 Providing health information, namely, information in the field of healthcare and nutritional supplements, dietary supplements, vitamin and mineral supplements</p>

U.S. Registration No.	2863920	Application Date	12/01/1999
Registration Date	07/20/2004	Foreign Priority Date	09/24/1999
Word Mark	YOU CAN!		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: [[nutritional supplements; dietary supplements vitamins and mineral supplements]]</p> <p>Class 016. First use: [Books,] newspapers, [journals, pamphlets, magazines, printed teaching materials, all] in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements; [educational materials, namely, books,] newspapers, [journals, pamphlets, magazines, leaflets,] in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements</p> <p>Class 031. First use: [Agricultural seeds, agricultural grains for planting, and wheat seeds for use in agriculture and horticulture containing vitamins, amino acids, minerals and trace elements]</p> <p>Class 041. First use: [[Educational services namely, conducting instruction in the form of classes, seminars, [conferences,] workshops, [conducting online courses, conducting correspondence courses,] and conducting continuing education courses in the field of healthcare and nutritional supplements, and distributing course material in connection therewith]]</p> <p>Class 042. First use: [[Providing health information, namely, information in the field of healthcare and nutritional supplements, dietary supplements, vitamin and mineral supplements]]</p>		

Attachments	85769860.pdf(26948 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	/John C. Blattner/
Name	John C. Blattner
Date	10/21/2013

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

*In re U.S. Trademark Application Serial No. 85769860 for
YES YOU CAN!, International Class 5; filed November 2, 2012*

DR. MATTHIAS RATH,

Opposer,

v.

TTAB No:

CHABAN WELLNESS LLC,

Applicant.

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NOTICE OF OPPOSITION

Opposer DR. MATTHIAS RATH, an individual, believes that he will be damaged by registration of the mark shown in Application Serial No. 85769860 in International Class 5, and opposes the same. As grounds for the opposition, Opposer alleges as follows:

1. Upon information and belief, Applicant is a Florida limited liability company domiciled in Coral Gables, Florida.
2. On or about November 2, 2012, Applicant filed Application Serial No. 85769860 (“the ‘860 Application”) for the mark YES YOU CAN! in International Class 5 for “Nutraceuticals for use as a dietary supplement; protein supplement shakes and drink mixes.”
3. Opposer is the owner of Reg. No. 3967892, filed July 6, 2010, for the mark YOU CAN, in standard characters, for the following goods and services:
 - Nutritional supplements; dietary supplements; vitamins and mineral supplements, in Class 5, with a date of first use on commerce of January 20, 2011;
 - Newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements; educational materials, namely, newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements, in Class 16, with a date of first use on commerce of January 20, 2011;

- Educational services, namely, conducting instruction in the form of classes, seminars, workshops, and conducting continuing education courses in the field of healthcare and nutritional supplements, and distributing course material in connection therewith, in Class 41, with a date of first use on commerce of January 20, 2011; and
- Providing health information, namely, information in the field of healthcare and nutritional supplements, dietary supplements, vitamin and mineral supplements, in Class 44, with a date of first use on commerce of January 20, 2011.

4. Opposer is also the owner of Reg. No. 2863920, for the mark YOU CAN!, in stylized form, for the following goods and services:

- Nutritional supplements; dietary supplements; vitamins and mineral supplements, in Class 5;
- Newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements; educational materials, namely, newspapers in the field of healthcare, nutritional supplements, dietary supplements, vitamin and mineral supplements, in Class 16;
- Educational services, namely, conducting instruction in the form of classes, seminars, workshops, and conducting continuing education courses in the field of healthcare and nutritional supplements, and distributing course material in connection therewith, in Class 41; and
- Providing health information, namely, information in the field of healthcare and nutritional supplements, dietary supplements, vitamin and mineral supplements, in Class 44.

5. Opposer has not authorized Applicant to use or apply to register the mark shown in the '860 Application.

6. Registration of Applicant's mark is likely to cause the public to be confused, misled, or deceived, and to believe that Opposer is the source of Applicant's goods, or that Applicant's goods are affiliated, associated, approved, sponsored, licensed, or authorized by Opposer, when in fact they are not.

7. Registration of Applicant's mark will cause harm to Opposer by damaging Opposer's good will in its marks, including those referenced herein.

WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 85769860 in International Class 5, and opposes registration thereof on the grounds set forth above. Opposer further prays that Application Serial No. 85769860 be rejected, and that registration of Applicant's mark be refused.

The \$300 fee for one class required under 2.6(a)(17) is enclosed herewith.

DICKINSON WRIGHT, PLLC

October 21, 2013

By: /John C. Blattner/

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Attorney for Opposer, DR. MATTHIAS RATH

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