

ESTTA Tracking number: **ESTTA599653**

Filing date: **04/21/2014**

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 | The Quaker Oats Company |
| Granted to Date of previous extension | 04/20/2014 |
| Address | 555 West Monroe Street Chicago, IL 60661 UNITED STATES |

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| Attorney information | Adam S. Weiss Polsinelli PC 161 N. Clark Street, Suite 4200 Chicago, IL 60601-3316 UNITED STATES aweiss@polsinelli.com, kesullivan@polsinelli.com, uspt@polsinelli.com Phone:312-873-3644 |
|----------------------|---|

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 85939557 | Publication date | 10/22/2013 |
| Opposition Filing Date | 04/21/2014 | Opposition Period Ends | 04/20/2014 |
| Applicant | Biopulse Nutrition, LLC 3611 W. Cambridge Ave., Ste. 3 Phoenix, AZ 85009 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 030. First Use: 2013/04/30 First Use In Commerce: 2013/04/30 All goods and services in the class are opposed, namely: Oatmeal |
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Grounds for Opposition

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|--------------------------------|-------------------------------|
| The mark is merely descriptive | Trademark Act section 2(e)(1) |
| Genericness | Trademark Act section 23 |

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| Attachments | Notice of Opposition - Serial No. 85939557 for mark MYOATMEAL.pdf(165632 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 | /Adam S. Weiss/ |
| Name | Adam S. Weiss |
| Date | 04/21/2014 |

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

| | | |
|-------------------------|---|-----------------------------------|
| -----X | | |
| THE QUAKER OATS COMPANY | : | In the Matter of Application |
| | : | Serial No. 85939557 for the mark |
| Opposer, | : | MYOATMEAL |
| | : | |
| v. | : | Published in the Official Gazette |
| | : | on October 22, 2013 |
| BIOPULSE NUTRITION, LLC | : | |
| | : | |
| Applicant. | : | Opposition No. _____ |
| -----X | | |

NOTICE OF OPPOSITION

The Quaker Oats Company, a New Jersey corporation having a place of business at 555 West Monroe Street, Chicago, IL 60661 ("Opposer"), hereby opposes the application of Biopulse Nutrition, LLC, an Arizona limited liability company having a place of business at 3611 W. Cambridge Ave., Suite 3, Phoenix, AZ 85009 (hereinafter "Applicant"), pursuant to 37 CFR § 2.104(a), for an application to register MYOATMEAL, U.S. Application Serial No. 85939557, in Class 30 ("the Application").

As grounds for opposition, Opposer states:

1. The Quaker Oats Company, through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Quaker Oats"), has been engaged in the manufacture and sale of oatmeal for over 135 years and is now one of the largest sellers of oatmeal in the United States.

2. The United States Patent & Trademark Office previously granted to Quaker Oats extensions to oppose the Application.

3. Opposer's oatmeal varieties are marketed and sold in tremendous quantities on a nationwide basis, supported by many millions of dollars in advertising and promotion each year. Opposer's oatmeal varieties are sold in almost every

supermarket in the United States.

4. Opposer has produced and sold oatmeal for many years. Opposer has expanded its product lines to include several oatmeal varieties and other products made from oats, manufactured and sold exclusively by Opposer.

5. Applicant's MYOATMEAL mark was published for "oatmeal" in International Class 30.

6. Applicant has not disclaimed the term "MYOATMEAL" from the Application, which is a combination of the descriptive term "MY" with the generic term "OATMEAL."

7. The word OATMEAL is generic for the identified goods in the Application, namely, oatmeal, and therefore unregistrable as used in connection with Applicant's goods. The word MY is a possessive term and as combined with a generic noun, creates a descriptive and/or generic phrase "MY OATMEAL."

8. Registration of the Application is barred by Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1) because Applicant seeks to register a mark that is merely descriptive of the goods inasmuch as it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

9. The literal element of Applicant's mark describes ingredients, qualities and features of the goods, in that MY OATMEAL describes an ingredient, purpose or use of the goods, namely the ingredient oatmeal and the purpose or use of the goods, to purchase and consume the goods, thereby making it "my oatmeal."

10. Applicant's alleged mark consists of a combination of the possessive term MY with the generic term OATMEAL that together do not evoke a new and unique commercial impression. The component words, MY and OATMEAL, each retain their descriptive and/or generic significance in relation to the goods, so the combination results in a composite that is itself descriptive and/or generic. See In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004).

11. Applicant has not provided proof that the mark has acquired

distinctiveness as applied to MYOATMEAL used on Applicant's goods in commerce and therefore is not registrable on the Principal Register under §2(f) of the Trademark Act, 15 U.S.C. §1052(f).

12. Registration of the Application would provide color of *prima facie* exclusive rights to Applicant to use MYOATMEAL exclusively. Therefore, allowing registration of Applicant's mark is a source of damage and injury to Opposer inasmuch as it would preclude Opposer from using the same or similar descriptive or generic wording or phrasing in their advertising for oatmeal and oat based products. See In re Abcor Development Corp., 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978) (descriptive marks should not be registered in order to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products).

13. Registration of the Application should be refused in order to maintain freedom of the public and Opposer to use the descriptive and/or generic language included in the Application that is necessary to advertise and properly describe Opposer's own products. See Estate of P.D. Beckwith, Inc. v. Comm'r of Patents, 252 U.S. 538, 543-44 (1920).

WHEREFORE, for the reasons set forth above, Opposer prays that the Application be rejected, and that registration of the Application be denied and refused.

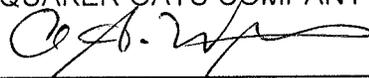
This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Respectfully submitted,

THE QUAKER OATS COMPANY

Date: April 21, 2014

By:



Adam S. Weiss
Karin E. Sullivan
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Attorneys for Opposer

CERTIFICATE OF SERVICE

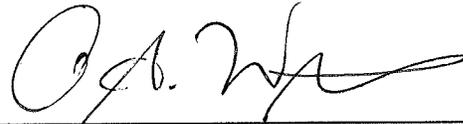
I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on Applicant and Applicant's Attorney of Record on April 21, 2014, by sending same via First Class mail, postage prepaid, to the following parties:

Applicant

Biopulse Nutrition, LLC
3611 W. Cambridge Ave. Suite 3
Phoenix, AZ 85009

Applicant's Attorney of Record

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One of the Attorneys for Opposer