

ESTTA Tracking number: **ESTTA681442**

Filing date: **07/01/2015**

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	NutraMarks, Inc.
Granted to Date of previous extension	07/01/2015
Address	1500 Kearns Boulevard, Suite B200 Park City, UT 84060 UNITED STATES

Attorney information	Alison Pitt NutraMarks, Inc. 1500 Kearns Boulevard, Suite B200 Park City, UT 84060 UNITED STATES apitt@nutracorp.com Phone:(435) 655-6000
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Applicant Information

Application No	86379795	Publication date	03/03/2015
Opposition Filing Date	07/01/2015	Opposition Period Ends	07/01/2015
Applicant	Thaler, Jason 440 N. Luna Ct. Hollywood, FL 33021 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2010/12/00 First Use In Commerce: 2010/12/00 All goods and services in the class are opposed, namely: Nutraceuticals for use as a dietary supplement for restoring nutrients lost from prescription medications and increasing the effectiveness of prescription medications

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Likelihood of confusion under common law rights

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86449428	Application Date	11/10/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COMPLIMED		

Design Mark	COMPLIMED
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1996/04/08 First Use In Commerce: 1996/04/08 Nutritional supplements and homeopathic supplements and preparations, namely preparations for treating allergies, pain, inflammation, and infection, for internal cleansing, and for treating blood sugar, cardiovascular, digestive and intestinal, glandular, joint and muscular skeletal, liver, respiratory, skin, and urinary conditions; medicated creams; medicated nasal sprays

U.S. Registration No.	2194040	Application Date	02/12/1996
Registration Date	10/06/1998	Foreign Priority Date	NONE
Word Mark	COMPLIMED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1996/04/08 First Use In Commerce: 1996/04/08 nutritional supplements and a full line of homeopathic preparations		

Attachments	86449428#TMSN.png(bytes) Notice_of_Opposition_7-1-2015.pdf(49905 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	/jeffery m lillywhite/
Name	Jeffery M. Lillywhite
Date	07/01/2015

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

In the matter of Trademark Application Serial No. 86/379,795
Published in the Official Gazette of March 3, 2015 at TM 2053
International Class: 5
Filed: August 28, 2014
Mark: COMPLEMEDS

NUTRAMARKS, INC.,)	Opposition No.: _____
)	
Opposer,)	
)	
v.)	NOTICE OF OPPOSITION
)	
JASON THALER,)	
)	
Applicant.)	

Opposer NutraMarks, Inc. (hereinafter referred to as “NutraMarks” or “Opposer”), a corporation with a principal place of business at 1500 Kearns Boulevard, Suite B200, Park City, UT 84060, believes that it will be damaged by registration of the mark “COMPLEMEDS”, shown in Serial Number 86/379,795 in International Class 5, and hereby opposes same. The grounds for the opposition are that:

1. Upon information and belief, JASON THALER (“Applicant”) is an individual residing at 440 N. Luna Ct. Hollywood FLORIDA 33021. Applicant seeks to register the mark “COMPLEMEDS” (“Applicant’s Mark”) as a trademark to be used in International Class 5, as evidenced by the publication of such mark in the Official Gazette on TM 2053 of the March 3, 2015 issue, in conjunction with goods identified as “Nutraceuticals for use as a dietary supplement for restoring nutrients lost from prescription medications and increasing the effectiveness of prescription medications.”

2. Opposer believes that the Applicant’s mark has not yet been properly used in commerce because it was not able to find any “COMPLEMEDS” branded products using an Internet search. In

addition, the Applicant's specimen that was submitted to the USPTO appears to be a printer's proof, which is not a proper specimen.

3. Applicant filed its application on August 28, 2014, and received an application serial number of 86/379,795 on the basis of Section 1(a) of the Lanham Act.

4. For many years and long prior to the effective filing date of the subject application, Opposer has been engaged in the development, manufacture, distribution, marketing and line of branded nutritional supplement products sold in interstate commerce throughout the United States and the world in association with the pending application and common law mark "COMPLIMED" as evidenced by the Web site: <http://www.nutraceutical.com/collections/natures-cures/complimed/>. The goods offered by Opposer in association with such pending application and common law mark are such that the consumers will likely be confused as to the source of the goods offered by Applicant.

5. Opposer first began using the COMPLIMED mark in interstate commerce at least as early as April 8, 1996 for Nutritional supplements and homeopathic supplements and preparations, namely preparations for treating allergies, pain, inflammation, and infection, for internal cleansing, and for treating blood sugar, cardiovascular, digestive and intestinal, glandular, joint and muscular skeletal, liver, respiratory, skin, and urinary conditions; medicated creams; medicated nasal sprays as evidenced by its application, U.S. Application Serial No. 86/449,428 for COMPLIMED and for nutritional supplements and a full line of homeopathic preparations as evidenced by its cancelled Reg. No. 2,194,040 for COMPLIMED, under the Lanham Act, 15 U.S.C. § 1051 and has used this mark continuously since that date.

6. Prior to the effective filing date of the subject application, Opposer had used the COMPLIMED mark on goods sold in interstate commerce. Accordingly, Opposer has developed goodwill and common law rights under 15 U.S.C. § 1125(a) in addition to its federal trademark rights before the subject application was filed and before the date of first use associated with the subject application.

7. For many years, Opposer has used the COMPLIMED mark to distinguish its products from other goods of the same type, and Opposer has acquired indisputable worldwide goodwill, reputation and fame in connection with the COMPLIMED mark through its use thereof.

8. Since Opposer's adoption and initial use of the COMPLIMED mark, Opposer has made a substantial investment in marketing and promoting its goods under this mark. Opposer has extensively used, advertised, promoted and offered for sale goods in association with the Opposer's COMPLIMED mark with the result that Opposer's customers and the general public have come to know and recognize Opposer's COMPLIMED mark and that the public associates this mark with Opposer and/or its goods, Opposer has developed indisputable worldwide extensive goodwill with the sale of goods under the COMPLIMED mark.

9. As a result of Opposer's substantial and continuous use of the COMPLIMED mark in association with Opposer's goods, including advertising, labeling, marketing and performing, Opposer's COMPLIMED mark has become an asset of substantial value to Opposer as a distinctive indication of the origin and quality of its products. Products bearing the Opposer's COMPLIMED mark are marketed and sold throughout the United States and have acquired a broad and valuable reputation and goodwill.

10. Notwithstanding the inherent distinctiveness of Opposer's COMPLIMED mark, Opposer's COMPLIMED mark has also acquired secondary meaning to the public indicating Opposer as the source of goods bearing Opposer's COMPLIMED mark.

11. Opposer's COMPLIMED mark is distinctive and serves as a unique designation of origin with respect to goods offered by Opposer.

12. The Applicant's Mark "COMPLEMEDS" is almost identical in spelling, sight and sound to Opposer's mark COMPLIMED and the literal elements of its trademark.

13. A likelihood of confusion in the marketplace exists between Opposer's COMPLIMED mark, when applied to the goods of the respective parties and Applicant's Mark, since both identify a nutritional supplement product.

14. Registration of Applicant's Mark will result irreparable dilution and damage to Opposer's trademark and Opposer's business.

15. If Applicant is permitted to register its mark for its goods as specified in the application herein opposed, such use and registration would result in confusion in the trade by reason of the similarity between Applicant's Mark and Opposer's COMPLIMED mark, thereby damaging and injuring Opposer. Any such confusion may result in the loss of business to Opposer. Furthermore, any defect, objection or fault found with the Applicant's goods marketed under Applicant's Mark may reflect upon and injure the reputation which Opposer has established for its goods in association with Opposer's COMPLIMED mark.

16. 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. Such registration would be a further source of damage to Opposer.

17. In view of the foregoing, Applicant is not entitled to federal registration of its claimed mark because Applicant's Mark as used upon its identified goods is not entitled to protection. Further, Applicant does not have right to exclusive use of said mark in commerce on Applicant's goods. Applicant's Mark, as claimed, does not and cannot function to identify such goods and to distinguish them from goods offered by Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that Application Number 86/379,795 be refused, and for such other and further relief at law or in equity as the Commissioner of Patents and Trademarks shall deem necessary or appropriate under the circumstances.

The fee required under 37 C.F.R. § 2.6(17) is submitted herewith.

Dated this 1st day of July, 2015.

Respectfully submitted,

By: /Jeffery M. Lillywhite/

Jeffery M. Lillywhite
NutraMarks, Inc.
1500 Kearns Boulevard, Suite B200
Park City, UT 84060
Telephone: (435) 655-6000

Attorney for Opposer
NutraMarks, Inc.

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant by First Class Mail, postage prepaid this 1st day of July, 2015, in an envelope addressed as follows:

MATTHEW H. SWYERS,
THE TRADEMARK COMPANY
344 MAPLE AVE W STE 151
VIENNA, VA 22180

/Jeffery M. Lillywhite/