

ESTTA Tracking number: **ESTTA708103**

Filing date: **11/12/2015**

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	Market America, Inc.
Granted to Date of previous extension	11/14/2015
Address	1302 Pleasant Ridge Road Greensboro, NC 27409 UNITED STATES
Attorney information	Clement D. Erhardt Market America, Inc. 1302 Pleasant Ridge Road, Legal Dept Greensboro, NC 27409 UNITED STATES trademarks@marketamerica.com, jmorris@marketamerica.com Phone:336/605-0040

Applicant Information

Application No	86469018	Publication date	09/15/2015
Opposition Filing Date	11/12/2015	Opposition Period Ends	11/14/2015
Applicant	Luciano Sztulman M.D., Inc. Suite 401 Providence, RI 02904 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Vitamins

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.	2944356	Application Date	04/26/2002
Registration Date	04/26/2005	Foreign Priority Date	NONE
Word Mark	VITA-MIND		

Design Mark	VITA-MIND
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2002/08/01 First Use In Commerce: 2002/08/01 Nutritional Supplement for mental acuity and alertness

Attachments	76400246#TMSN.png(bytes) 2015-11-12 Vitamindful Opposition Complaint (Fully-Executed).pdf(151423 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 Overnight Courier on this date.

Signature	/Clement D. Erhardt/
Name	Clement D. Erhardt
Date	11/12/2015

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

In the matter of trademark application Serial No. 86469018

For the mark VITAMINDFUL

Published in the Official Gazette on September 15, 2015

Market America, Inc.,

Opposer,

v.

Luciano Sztulman M.D., Inc.,

Applicant.

NOTICE OF OPPOSITION

The above-identified opposer (“Market America”) believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The applicant, Luciano Sztulman M.D., Inc. (“Applicant”) filed a trademark application assigned Application Serial No. 86469018 in the United States Patent and Trademark Office (“PTO”) on December 2, 2014 (the “Application”) to register the mark VITAMINDFUL for use in connection with “Vitamins” in International Class 005 (“Applicant’s Mark”).

2. The Application is based on Applicant’s intent to use the mark. On information and belief, at the time Applicant filed the Application, Applicant did not have actual use of Applicant’s Mark as a trademark with the goods and services identified above.

services related or complementary thereto since long before the filing date of the Application to register VITAMINDFUL.

9. Applicant's Mark, VITAMINDFUL, so resembles Market America's trademark, VITA-MIND, as to be likely, when applied to the goods and services of the Application, to cause confusion, mistake, or deception among purchasers, users, and the public, thereby damaging Market America. Indeed, Applicant's Mark, VITAMINDFUL is confusingly similar in sound and appearance to Market America's trademark, VITA-MIND, and indeed, Applicant's Mark incorporates Market America's trademark, adding only "FUL" to the end.

10. The goods and services for which Applicant indicates its intent to use the VITAMINDFUL mark are identical or substantially similar to, used for the same or similar purposes, and/or will be advertised and promoted to and directed at the same trade channels, the same purchasers, and/or are or will be used in the same environment as Market America's products and related goods and services.

11. As a result of the similarity of the parties' trademarks, the similarity of the goods and services associated with the trademarks, the similarity of trade channels and environment, and the strength of Market America's VITA-MIND trademark, Applicant's registration and use of the Applicant's Mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of the goods and services.

12. Prospective purchasers are likely to mistakenly believe that Applicant's goods and services are sponsored by, authorized, endorsed, affiliated with, or otherwise approved by Market America because Applicant's VITAMINDFUL mark is confusingly similar to Market America's VITA-MIND trademark.

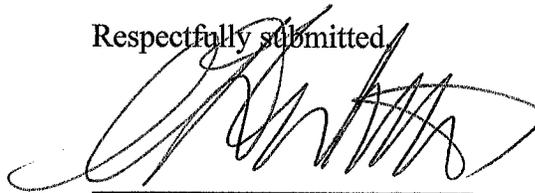
13. If Applicant is permitted to registered its VITAMINDFUL mark for the goods and services described in the Application, Market America will suffer damage or injury by, among other things, the resulting confusion of prospective purchasers due to the similarity of the goods and services associated with the trademarks, and the similarity of trade channels and environment; and the resultant dilution through blurring, tarnishing, and/or the lessening of the capacity of Market America's VITA-MIND trademark to identify and distinguish its goods bearing the VITA-MIND trademark.

14. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Market America believes that it would be damaged thereby.

15. WHEREFORE, Market America respectfully requests that registration of Applicant's Mark be refused, and that this Opposition be sustained in favor of Market America.

Dated: November 12, 2015

Respectfully submitted,

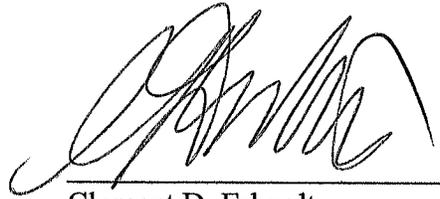


Clement D. Erhardt
Attorney of record, M.D. bar member
General Counsel
Market America, Inc.
336/605-0040

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Market America, Inc.'s Notice of Opposition was served upon Luciano Sztulman M.D., Inc. by overnight courier on November 12, 2015 at the following address:

Luciano Sztulman M.D., Inc.
One Randall Square
Suite 401
Providence, RI 02904

A handwritten signature in black ink, appearing to read 'C. Erhardt', written over a horizontal line.

Clement D. Erhardt
Attorney of record, M.D. bar member
General Counsel
Market America, Inc.
336/605-0040