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Filing date: **11/16/2015**

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

Proceeding	91224818
Party	Plaintiff Market America, Inc.
Correspondence Address	Clement D. Erhardt Market America, Inc. 1302 Pleasant Ridge Road, Legal Dept Greensboro, NC 27409 UNITED STATES trademarks@marketamerica.com, jmorris@marketamerica.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Clement D. Erhardt
Filer's e-mail	trademarks@marketamerica.com
Signature	/Clement D. Erhardt/
Date	11/16/2015
Attachments	2015-11-16 Motion to Amend Vitamindful Opposition Complaint (Fully-Executed).pdf(81451 bytes) 2015-11-12 Vitamindful Opposition Complaint (Fully-Executed).pdf(200998 bytes)

**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.

Opposition No. 91224818

MOTION TO AMEND NOTICE OF OPPOSITION

1. Pursuant to Fed R. Civ. P. 15(a)(2) and TBMP Section 507.02, Opposer Market America, Inc. respectfully requests that the Board grant Opposer leave to file a replacement Notice of Opposition.

2. Filing was timely.

3. Inadvertently, during filing, a page was missing from the scanned document and the entire document did not come through. The Applicant's legal counsel has already received the correct/replacement Notice of Opposition.

WHEREFORE, Opposer hereby respectfully requests that the Board grant Opposer leave to amend its Notice of Opposition filing as set forth above.

Dated: November 16, 2015

Respectfully submitted,

/s/ Clement D. Erhardt
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 16, 2015 at the following address:

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

/s/ Clement D. Erhardt
Clement D. Erhardt
Attorney of record, M.D. bar member
General Counsel
Market America, Inc.
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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.

3. The Application was published for opposition in the *Official Gazette* on September 15, 2015. Market America obtained an extension of time to oppose the Application to November 14, 2015. Thus, this Opposition is timely filed with respect to the Application.

4. Market America is now and has for over ten years been engaged in the development, marketing, advertising, distribution, and sale of dietary supplements bearing the VITA-MIND® trademark, and various other products and services related or complementary thereto.

5. Since at least August 1, 2002, Market America has used the trademark VITA-MIND in connection with dietary supplements and various other products and services related or complementary thereto, and owns a trademark registration for and common law rights to the VITA-MIND trademark.

6. Market America's VITA-MIND trademark was registered with the Patent & Trademark Office on April 26, 2005, Registration No. 2944356, for "Nutritional Supplement for mental acuity and alertness."

7. Through Market America's long, extensive, and continuous use of the VITA-MIND trademark, the VITA-MIND trademark is and has become a valuable asset of Market America, identifying its dietary supplements and various other products and services related or complementary thereto, and distinguishes Market America's products and services from the products and services of others. The public has come to recognize the VITA-MIND trademark as being uniquely associated with Market America.

8. The VITA-MIND trademark has been used continuously in interstate commerce on and in connection with Market America's dietary supplements and various other products and

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.

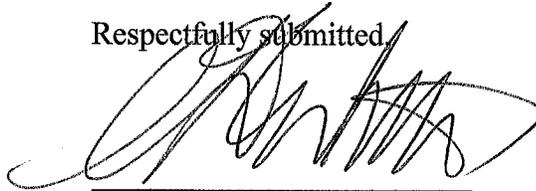
13. If Applicant is permitted to registered its VITAMINDFUL mark for the goods and services described in the Application, Market America will suffer damage or injury by, among other things, the resulting confusion of prospective purchasers due to the similarity of the goods and services associated with 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,

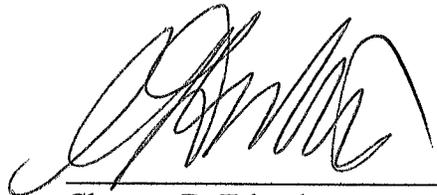
A handwritten signature in black ink, appearing to read 'C. Erhardt', written over a horizontal line.

Clement D. Erhardt
Attorney of record, M.D. bar member
General Counsel
Market America, Inc.
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