

ESTTA Tracking number: **ESTTA767478**

Filing date: **08/29/2016**

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	Fresenius Kabi AG
Granted to Date of previous extension	08/28/2016
Address	Else-Kröner-Str. 1 Bad Homburg, 61352 GERMANY

Attorney information	Lee J. Eulgen Neal Gerber & Eisenberg LLP Two North LaSalle Street Chicago, IL 60602 UNITED STATES leulgen@ngelaw.com, mhoffman@ngelaw.com, afuelleman@ngelaw.com
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Applicant Information

Application No	86670780	Publication date	03/01/2016
Opposition Filing Date	08/29/2016	Opposition Period Ends	08/28/2016
Applicant	D.H.S. WE CARE INC. 18000 Long Canyon Road Desert Hot Springs, CA 92241 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: Nutritional supplements

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.	4941682	Application Date	02/19/2013
Registration Date	04/19/2016	Foreign Priority Date	NONE
Word Mark	CARING FOR LIFE		

Design Mark	<h1>CARING FOR LIFE</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2014/11/10 First Use In Commerce: 2014/11/10 Biopharmaceutical preparations for use in the treatment of tissue and organ transplants; Medical fluids for organ perfusion and preservation; Immunosuppressionagents; Pharmaceutical and sanitary preparations for dialysis therapy; pharmaceutical preparations for the treatment of chronic kidney disease; nutritional supplements; Pharmaceutical solutions used in dialysis

U.S. Registration No.	4813374	Application Date	02/19/2013
Registration Date	09/15/2015	Foreign Priority Date	NONE

Word Mark	CARING FOR LIFE
Design Mark	<h1>CARING FOR LIFE</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2014/11/10 First Use In Commerce: 2014/11/10 Biopharmaceutical preparations for use in the treatment of immunological conditions; Biopharmaceutical preparations for use in the treatment of tumors; Biopharmaceutical preparations for use in the treatment of immune system conditions; medicinal preparations for the treatment of infectious diseases and for use in oncology; Pharmaceutical preparations, namely, enteral and parenteral nutrition, admixtures to parenteral nutrition and compound of parenteral nutrition; compound of intravenous drugs, namely, pharmaceutical preparations as a constituent of compound of pharmaceuticals for use in nutritional therapy, immune therapy, pain therapy, cancer therapy, the treatment of infectious diseases, the treatment of blood and blood volume; infusion solutions for the delivery of drugs and pharmaceutical preparations, namely, for parenteral nutrition, for use in nutritional therapy, immune therapy, pain therapy, cancer therapy, the treatment of infectious diseases, the treatment of blood and blood volume, the treatment of oedema and for use in anaesthesia; standard infusion solutions for blood volume replacement and drug reconstitution; pharmaceutical preparations, namely, rinsing solutions for washing purposes, blood volume expanders, antibi-

	otics, anti-infectives, analgesics and anaesthetics; injectable critical care drugs, namely, anti-infectives, anaesthesia and analgesia for critical care; oral drugs, namely, antibiotics, anti-infectives, analgesics and anaesthetics; pharmaceutical preparations used in oncology; medical packaging sets comprising bags, bottles, structural parts and replacement parts filled with pharmaceutical preparations and dietetic products for enteral and parenteral nutrition, admixtures to parenteral nutrition; clinical medical reagents for processing human blood for use in blood transfusions stored in bags; Pharmaceutical preparations for the treatment of blood volume; Intravenous fluids for nutrition and the delivery of pharmaceutical preparations; blood bank accessories for medical use, namely, solutions for the storage and washing of medical devices used in blood procedures
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Attachments	85854119#TMSN.png(bytes) 85983752#TMSN.png(bytes) Notice of Opposition - WE CARE FOR LIFE_.pdf(19410 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	/Lee J. Eulgen/
Name	Lee J. Eulgen
Date	08/29/2016

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

In re Application Serial No.: 86/670,780)	
)	
Mark: WE CARE FOR LIFE)	
)	Opposition No. _____
)	
FRESENIUS KABI AG)	
)	
Opposer,)	
v.)	
)	
D.H.S. WE CARE INC.)	
)	
Applicant.)	
)	
Published in the Official Gazette)	
On March 1, 2016)	

NOTICE OF OPPOSITION

This Notice of Opposition is submitted in the matter of Application Serial No. 86/670,780, by which D.H.S. We Care Inc. (“Applicant”) seeks to register the trademark WE CARE FOR LIFE based on an intent to use in connection with “nutritional supplements” in Class 5 (“Subject Application”). The Application was published for opposition in the Official Gazette on March 1, 2016. Fresenius Kabi AG, a joint stock company organized under the laws of Germany with a place of business at Else-Kröner-Str. 1, 61352 Bad Homburg, Germany (“Fresenius”), believes that it would be damaged by the registration and therefore opposes the same.

The grounds for Opposition herein are as follows:

1. Fresenius is a world renowned health care company that specializes in pharmaceuticals, clinical nutrition, medical technologies and a range of related services for medical professionals and patients.

2. Since it was founded more than a century ago, Fresenius has expended substantial effort and resources in the development, manufacture, marketing, and sale of its broad range of pharmaceutical and health care-related products and services. Fresenius uses CARING FOR LIFE as its signature tag line in connection with an expansive range of its products and services. Indeed, Fresenius’s global team has prominently used and promoted the CARING FOR LIFE designation in connection with its medical, pharmaceutical, and therapeutic products and services and, as a result, the CARING FOR LIFE mark has become well known to consumers and industry participants alike.

3. To further protect the CARING FOR LIFE mark, Fresenius’s has obtained numerous federal registrations for its CARING FOR LIFE mark, including without limitation the following filings:

Mark	Reg. No.	Priority Date	Goods
CARING FOR LIFE	4941682	Feb. 19, 2013	Class 5: Biopharmaceutical preparations for use in the treatment of tissue and organ transplants; Medical fluids for organ perfusion and preservation; Immunosuppression agents; Pharmaceutical and sanitary preparations for dialysis therapy; pharmaceutical preparations for the treatment of chronic kidney disease; nutritional supplements; Pharmaceutical solutions used in dialysis

Mark	Reg. No.	Priority Date	Goods
CARING FOR LIFE	4813374	Feb. 19, 2013	<p>Class 5: Biopharmaceutical preparations for use in the treatment of immunological conditions; Biopharmaceutical preparations for use in the treatment of tumors; Biopharmaceutical preparations for use in the treatment of immune system conditions; medicinal preparations for the treatment of infectious diseases and for use in oncology; Pharmaceutical preparations, namely, enteral and parenteral nutrition, admixtures to parenteral nutrition and compound of parenteral nutrition; compound of intravenous drugs, namely, pharmaceutical preparations as a constituent of compound of pharmaceuticals for use in nutritional therapy, immune therapy, pain therapy, cancer therapy, the treatment of infectious diseases, the treatment of blood and blood volume; infusion solutions for the delivery of drugs and pharmaceutical preparations, namely, for parenteral nutrition, for use in nutritional therapy, immune therapy, pain therapy, cancer therapy, the treatment of infectious diseases, the treatment of blood and blood volume, the treatment of oedema and for use in anaesthesia; standard infusion solutions for blood volume replacement and drug reconstitution; pharmaceutical preparations, namely, rinsing solutions for washing purposes, blood volume expanders, antibiotics, anti-infectives, analgesics and anaesthetics; injectable critical care drugs, namely, anti-infectives, anaesthesia and analgesia for critical care; oral drugs, namely, antibiotics, anti-infectives, analgesics and anaesthetics; pharmaceutical preparations used in oncology; medical packaging sets comprising bags, bottles, structural parts and replacement parts filled with pharmaceutical preparations and dietetic products for enteral and parenteral nutrition, admixtures to parenteral nutrition; clinical medical reagents for processing human blood for use in blood transfusions stored in bags; Pharmaceutical preparations for the treatment of blood volume; Intravenous fluids for nutrition and the delivery of pharmaceutical preparations; blood bank accessories for medical use, namely, solutions for the storage and washing of medical devices used in blood procedures</p>

4. On information and belief, Applicant is a corporation organized under the laws of California with an address of 18000 Long Canyon Road, Desert Hot Springs, California 92241.

5. On June 23, 2015, notwithstanding Fresenius' prior rights in and to its CARING FOR LIFE marks, D.H.S. We Care Inc. ("Applicant") filed Application Serial No. 86/670,780 (the "Application") to register the mark WE CARE FOR LIFE (the "Subject Mark"). The Application was filed based on an intent to use in connection with "nutritional supplements" in International Class 5.

6. The Application was published in the Official Gazette of the USPTO on March 1, 2016. This Opposition is timely pursuant to the U.S. Trademark Trial & Appeal Board's June 27, 2016 order allowing Fresenius until August 28, 2016 to institute an opposition.

7. Fresenius' rights are prior to Applicant's. Each of the foregoing CARING FOR LIFE registrations has been in actual use prior to the application date, June 23, 2015, and cover products that are identical or closely related to the goods identified in the Application.

8. The Subject Mark is substantially similar to Fresenius' CARING FOR LIFE mark in that main difference is the non-distinctive term "WE."

9. Furthermore, the goods listed in the Application overlap with those designated by Fresenius' registered CARING FOR LIFE mark.

10. The Subject Mark is therefore likely to confuse, cause mistake among, or deceive the relevant public into believing that Applicant and Applicant's goods offered in connection with the Subject Mark are sponsored by, endorsed by, or in some manner related to the Fresenius in violation of 15 U.S.C. §§ 1052(d), 1114(1), 1125(a).

WHEREFORE, the Fresenius requests that the Application be refused and that this Notice of Opposition be sustained.

Fresenius authorizes the TTAB to charge the fees for opposition in one class and any additional fees related to this matter to the deposit account of Neal, Gerber & Eisenberg LLP.

Respectfully submitted,

Date: August 29, 2016

By: /Lee J. Eulgen/
One of the Attorneys for Opposer,
Fresenius Kabi AG
Lee J. Eulgen
Andrea S. Fuelleman
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CERTIFICATE OF SERVICE

I, Andrea S. Fuelleman, an attorney, state that, pursuant to 37 CFR §§ 2.101 and 2.119, I caused a copy of the foregoing Notice of Opposition to be served upon:

Christopher Civil
Raj Abhyanker P.C.
451 N Shoreline Blvd.
Mountain View, California 94043

via First Class Mail, postage prepaid, on August 29, 2016.

/Andrea S. Fuelleman/
Andrea S. Fuelleman