

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

In re Application of EDWARD)
ANTHONY D'AVANZO II)

Serial No.: 76/389,614)
Publication date: October 2, 2002)
Trademark: "BLUECOSAMINE")

Opposition No. 91,154,956

NUTRAMAX LABORATORIES, INC.)

Opposer)

v.)

EDWARD ANTHONY D'AVANZO II)

Applicant)



04-24-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Opposer, Nutramax Laboratories, Inc., ("Nutramax"), hereby files this Motion For Entry of Default Judgment, pursuant to F.R.C.P. 55, TBMP Rule 2.106(a) and 37 C.F.R. §2.106(a), against Applicant, Edward Anthony D'Avanzo II ("D'Avanzo"), and states as follows:

1. Nutramax instituted this Opposition by filing a Notice of Opposition on January 6, 2003, alleging that D'Avanzo's mark, "Bluecosamine," was confusingly similar to Nutramax's federally registered trademarks, Cosamin® and Cosamin Protek®, and Nutramax's pending federal trademark application for Cosamin Quick Start™.

2. Although D'Avanzo's Answer to Nutramax's Notice of Opposition was due to be filed on or before March 18, 2003, as of the date of this Motion, no Answer has been filed in this Opposition.

3. Since filing the Notice of Opposition, Nutramax and counsel for Nutramax have

received no communication whatsoever from D'Avanzo or counsel for D'Avanzo regarding this Opposition.

4. D'Avanzo cannot establish good cause or a meritorious defense to avoid entry of judgment against him for failure to answer the Notice of Opposition.

WHEREFORE, Opposer, Nutramax Laboratories, Inc., respectfully requests this Board:

1. Issue a Notice of Default to D'Avanzo for failure to answer; and

2. Upon D'Avanzo's failure to respond to the Notice of Default:

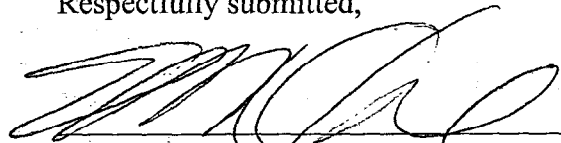
(i) Specifically find that Applicant's mark, "Bluecosamine," is likely to cause confusion or mistake as to the source of goods, quality and affiliation with the goods sold by Nutramax under Nutramax's registered trademarks, Cosamin® and Cosamin Protek®, and Nutramax's pending trademark application for Cosamin Quick Start™; and

(ii) Grant judgment in favor of Nutramax and against Applicant on all allegations of the Notice of Opposition.

3. Grant such other and further relief as this Board finds just and proper.

Dated: 4-23-03

Respectfully submitted,



Michael D. Oliver (#06919)

Elizabeth S. McClure (#25835)

BOWIE & JENSEN, L.L.C.

29 W. Susquehanna Avenue, Suite 600

Towson, Maryland 21204

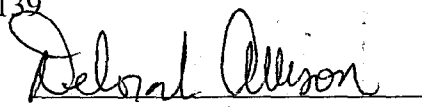
(410) 583-2400

Attorneys for Opposer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2003, a copy of the foregoing Opposer's Motion For Entry of Default Judgment was served by first-class United States mail, postage pre-paid, to counsel for Applicant:

Louis Uriarte, Esq.
Corporate Creations Professional Assoc.
941 Fourth Street, #200.
Miami Beach, FL 33139


Deborah L. Allison

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

In re Application of)
EDWARD ANTHONY D'AVANZO II)
Serial No.: 76/389,614)
Publication date: October 2, 2002)
Trademark: "BLUECOSAMINE")

Opposition No. 91,154,956

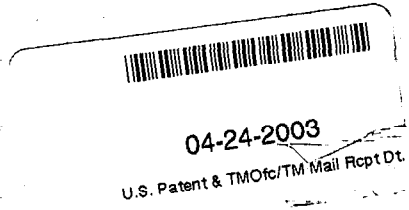
NUTRAMAX LABORATORIES, INC.)

Opposer)

v.)

EDWARD ANTHONY D'AVANZO II)

Applicant)



**MEMORANDUM IN SUPPORT OF
OPPOSER'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Opposer, Nutramax Laboratories, Inc., ("Nutramax"), files this Memorandum of Law in Support of its Motion for Entry of Default Judgment, pursuant to F.R.C.P. 55, TBMP Rule 2.106(a) and 37 C.F.R. §2.106(a), against Applicant, Edward Anthony D'Avanzo II ("D'Avanzo"), and states as follows:

I. BACKGROUND

Nutramax instituted this Opposition by filing a Notice of Opposition against D'Avanzo on January 6, 2003, alleging that D'Avanzo's mark, "Bluecosamine" is likely to cause confusion or mistake as to the source of goods, quality and affiliation with the goods sold by Nutramax under Nutramax's registered trademarks, Cosamin® and Cosamin Protek® and Nutramax's pending federal application for the mark Cosamin Quick Start™ (collectively, the "Marks"). Although D'Avanzo's

Answer to Nutramax's Notice of Opposition was due to be filed on or before March 18, 2003, as of the date of this Motion, no Answer has been filed in this Opposition. Further, since filing the Notice of Opposition, Nutramax and counsel for Nutramax have received no communication whatsoever from D'Avanzo, or counsel for D'Avanzo, regarding this Opposition.

II. STANDARD FOR ENTRY OF DEFAULT JUDGMENT

Under Fed. R. Civ. P. 55, made applicable by Trademark Rule 2.127, the Board shall enter default against the Applicant for failure to Answer the Notice of Opposition. Such entry of default may be set aside by Applicant only upon Applicant's showing of good cause for failing to file its Answer to the Notice of Opposition and establishment of a meritorious defense. *See id.*; *see also, Paolo's Associates, Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pats. 1990).

III. D'AVANZO'S CONDUCT IN UTTERLY FAILING TO ANSWER THE NOTICE OF OPPOSITION OR OTHERWISE CORRESPOND WITH NUTRAMAX REGARDING THE OPPOSITION CONSTITUTES DEFAULT ENTITLING NUTRAMAX TO JUDGMENT IN ITS FAVOR.

As of the date of this Motion, D'Avanzo's Answer to the Notice of Opposition is more than thirty-six (36) days overdue. Further, D'Avanzo's failure to communicate with Nutramax in any way regarding the Opposition indicates, at worst, D'Avanzo's willful refusal to respond or at best, his gross neglect in tracking the status of his trademark application and this Opposition proceeding. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991).

Moreover, if the allegations of the Notice of Opposition are taken as true, D'Avanzo cannot show a meritorious defense to the Notice of Opposition. *See id.* D'Avanzo's mark, "Bluecosamine," incorporates the entirety of Nutramax's registered and incontestable mark, Cosamin®. *See* Notice of Opposition. According to the trademark application Applicant seeks to register "Bluecosamine" in class 5, the same class as Nutramax's Marks. Further, the goods provided by the parties under their

respective marks are sold in the same or nearly the same marketing channels and may used to address the same health indications. Under the factors identified in *In re E.I. du Pont de Nemours & Co.*, 177 U.S. P.Q. 563, 567 (C.C.P.A. 1973), the scales tip dramatically in favor of Nutramax, thereby dictating judgment in favor of Nutramax on the issue of likelihood of confusion between Nutramax's Marks and "Bluecosamine."

IV. CONCLUSION

Therefore, for the reasons set forth above, Opposer, Nutramax Laboratories, Inc., requests the Board grant the relief more fully set forth in above and in Opposer's Motion for Entry of Default Judgment.

Respectfully submitted,



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Attorneys for Opposer

~~TTAB~~

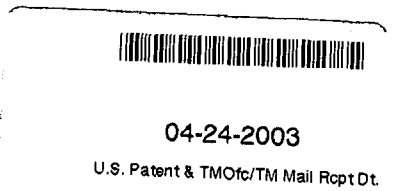
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April 23, 2003

BY EXPRESS MAIL
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513



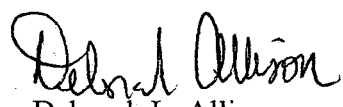
Re: Motion for Entry of Default Judgment
Mark: "Bluecosamine"
Opposition No. 91,154,956

Dear Sir/ Madame:

Enclosed for filing please find an original copy of "Motion for Entry of Default Judgment" in the above matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Deborah L. Allison
Paralegal

Enclosure
cc: Nutramax Laboratories, Inc.

