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

In the Matter of Application Serial No. 78/181,912  
Published in the *Official Gazette* on August 19, 2003

VITALITY FOODSERVICE, INC.

Opposer,

BRING IT HARD PRODUCTIONS, INC.

Applicant.

Opposition No.  
\_\_\_\_\_



11-19-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Commissioner for Trademarks  
Box TTAB FEE  
2900 Crystal Drive  
Arlington, VA 22202-3514

**NOTICE OF OPPOSITION**

Sir:

Opposer, Vitality Foodservice, Inc. believes it would be damaged by the registration of the trademark BRING IT HARD VITALITY DRINK, as shown in the above-identified application, and hereby opposes the same. As grounds for this opposition it is alleged that:

1. Opposer Vitality Foodservice, Inc. is a corporation of the state of Florida having an address of 400 N. Tampa Street, Tampa, Florida.
2. Since at least as early as March 5, 1935, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States a variety of non-alcoholic beverages, including frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea

under the trademark VITALITY. Opposer has sold in commerce frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea under the trademark VITALITY. As a result of its extensive sale of frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea, Opposer has become well known for frozen concentrated lemonade, orange juice, grapefruit juice, grape juice, apple juice and iced tea under the VITALITY trademark.

3. Since at least as early as July 31, 1957, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States concentrated juice dispensing units under the trademark VITALITY. Opposer has sold in commerce concentrated juice dispensing units under the trademark VITALITY. As a result of its extensive sale of concentrated juice dispensing units, Opposer has become well known for concentrated juice dispensing units under the VITALITY trademark.

4. Since at least as early as January 31, 1962, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States installation and maintenance services of juice dispensing equipment under the trademark VITALITY. Opposer has provided installation and maintenance services of juice dispensing equipment in commerce under the trademark VITALITY. As a result of its extensive installation and maintenance services of juice dispensing

equipment, Opposer has become well known for installation and maintenance services of juice dispensing equipment under the VITALITY trademark.

5. Since at least as early as June 28, 1971, a date long prior to the filing date of the present application, Opposer and its predecessors, Lykes Pasco, Inc., and Lykes Pasco Packing Co. have provided throughout the United States tomato and cranberry juice concentrates under the trademark VITALITY. Opposer has sold in commerce tomato and cranberry juice concentrates under the trademark VITALITY. As a result of its extensive sale of tomato and cranberry juice concentrates, Opposer has become well known for tomato and cranberry juice concentrates under the VITALITY trademark.

6. Since at least as early as December 5, 1991, a date long prior to the filing date of the present application, Opposer and its predecessor, Lykes Pasco, Inc. have provided throughout the United States refrigerated dispensing units under the trademark VITALITY EXPRESS. Opposer has sold in commerce refrigerated dispensing units under the trademark VITALITY EXPRESS. As a result of its extensive sale of refrigerated dispensing units, Opposer has become well known for refrigerated dispensing units under the VITALITY EXPRESS trademark.

7. Since at least as early as December 17, 1991, a date long prior to the filing date of the present application, Opposer and its predecessor, Lykes Pasco, Inc. have provided, throughout the United States, fruit juices, fruit juice concentrate and fruit drinks containing water under the trademark VITALITY EXPRESS PAK. Opposer has sold in commerce fruit juices,

fruit juice concentrate and fruit drinks containing water under the trademark VITALITY EXPRESS PAK. As a result of its extensive sale of fruit juices, fruit juice concentrate and fruit drinks containing water, Opposer has become well known for fruit juices, fruit juice concentrate and fruit drinks containing water under the VITALITY EXPRESS PAK trademark.

8. Since at least as early as April 2001, a date long prior to the filing date of the present application, Opposer has provided throughout the United States bottled water under the trademark VITALITY SPRINGS, and since that date Opposer has sold in commerce such bottled water under that trademark VITALITY SPRINGS. As a result of its extensive sale of bottled water, Opposer has become well known for bottled water under the VITALITY SPRINGS trademark.

9. Since at least as early as January 2000, a date long prior to the filing date of the present Application, Opposer has provided and sold throughout the United States sports drinks under the trademark VITALITY. Opposer has sold in commerce such sports drinks under that trademark VITALITY. As a result of its extensive sale of sports drinks, Opposer has become well known for sports drinks under the VITALITY trademark.

10. Opposer is the owner of United States Trademark Registration No. 907,932 for the mark VITALITY for concentrated juice dispensing units, frozen concentrated lemonade, frozen concentrated orange juice, grapefruit juice, grape juice, apple juice and iced tea, which was registered on February 16, 1971.

11. Opposer is the owner of United States Trademark Registration No. 919,962 for the mark VITALITY for installation and maintenance of juice dispensing equipment, which was registered on September 7, 1971.

12. Opposer is the owner of United States Trademark Registration No. 966,673 for the mark VITALITY for tomato and cranberry juice, which was registered on August 21, 1973.

13. Opposer is the owner of United States Trademark Registration No. 1,729,171 for the mark VITALITY EXPRESS for refrigerated dispensing units for beverages, which was registered on November 3, 1992.

14. Opposer is the owner of United States Trademark Registration No. 1,792,848 for the mark VITALITY EXPRESS PAK for fruit juices, fruit juice concentrate and fruit drinks containing water, which was registered on September 14, 1993.

15. By the application hereby opposed, Applicant Bring It Hard Productions, Inc. seeks to register, based on an intent to use, the designation BRING IT HARD VITALITY DRINK as a trademark for, sports drinks, namely energy drinks in International Class 32, goods intimately related in purchasers' minds with Opposer's sports drinks, fruit drinks, fruit juices, frozen concentrated fruit juices, and fruit juice concentrates.

16. From the information set forth in Applicant's trademark application file, Applicant has never provided the goods for which the registration is being sought, claiming only an intent to use the mark in the future, while Opposer has made extensive use of the trademark

In the Matter of Application Serial No. 78/181,912  
Vitality Foodservice, Inc. v. Bring It Hard Productions, Inc.

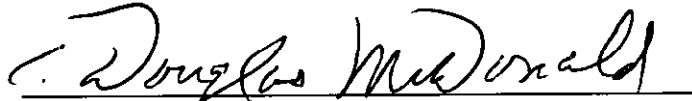
NOTICE OF OPPOSITION

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Dated: Tampa, Florida  
November 17, 2003

VITALITY FOODSERVICE, INC.

By:

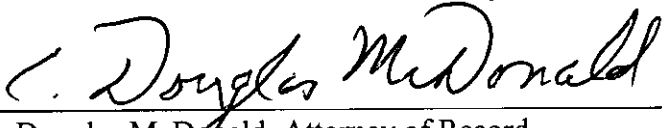


C. Douglas McDonald  
Andrew C. Greenberg  
Suzette M. Marteny  
Carlton Fields, P.A.  
P. O. Box 3239  
Tampa, Florida 33601  
Tel.: (813) 223-7000  
Fax: (813) 229-4133

CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL Mailing Label No. EV 185295337 US Date of Deposit: November 17, 2003

I hereby certify that an original and two copies of this Notice of Opposition are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and addressed to BOX TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.

  
C. Douglas McDonald, Attorney of Record

11/17/03  
Date