

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

In the Matter of Application Serial No. **76/560,054**
Filed: **November 13, 2003**
For the Mark: **ULTIMATE 69**
Published in the Official Gazette on: June 15, 2004

ULTIMATE NUTRITION, INC.		
	Opposer	
v.		Opposition No.
206 MACOPIN CORP.	Applicant	

NOTICE OF OPPOSITION

Ultimate Nutrition, Inc., hereinafter Opposer, believes that it will be damaged by the registration of the mark covered by Application Serial Number 76/560,054, hereinafter Application, filed on November 13, 2003 by 206 Macopin Corp., hereinafter Applicant, and hereby opposes the registration of the mark.

Opposer is a Connecticut corporation having its headquarters and its principal place of business at 21 Hyde Road, Farmington, Connecticut 06034.

Applicant is, upon information and belief, a New Jersey corporation, having its principal place of business at 206 Macopin Road, Bloomingdale, New Jersey 07403.

As grounds of opposition, it is alleged that:

10/14/2004 ZCLIFT01 00000086 76560054

01 FC:6402

300.00 OP

1. Applicant seeks to register ULTIMATE 69 as a trademark for nutritional dietary supplements, in International Class 005.

2. The alleged date of first use for the Application is May 1, 2003.

3. Opposer or Opposer's predecessors in interest have continuously used the trademark ULTIMATE NUTRITION in United States commerce since at least as early as November 1985 on or in connection with vitamins and nutritional food supplements.

4. Opposer is the owner of United States trademark registration no. 1,541,169 for the mark ULTIMATE NUTRITION for vitamins and nutritional supplements in International Class 005 registered on the Principal Register on May 30, 1989 as reflected on the records of the United States Patent and Trademark Office, a copy of said registration is attached as **Exhibit 1**. Said registration was based on an application filed in the United States Patent and Trademark Office on August 7, 1987, which is a date prior to the date of filing of Applicant's Application and prior to the date of Applicant's claimed date of first use. Said registered mark of Opposer is valid and subsisting and is prima facie evidence of Opposer's exclusive right to use said mark in commerce on the goods specified in said registration. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

5. Opposer has sold its goods as identified in said registration throughout the United States. Opposer has developed an exceedingly valuable goodwill in respect to the mark ULTIMATE NUTRITION related to the goods as identified in said registration.

6. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its product quality, Opposer has gained for its mark ULTIMATE NUTRITION a most valuable reputation.

7. The trademark proposed for registration by Applicant is substantially similar to Opposer's mark ULTIMATE NUTRITION and is likely to be confused therewith and mistaken therefor. Applicant's mark is deceptively similar to Opposer's trademark ULTIMATE NUTRITION so as to cause confusion and lead to deception as to the origin of Applicant's goods marketed under Applicant's mark.

8. Opposer has used its mark ULTIMATE NUTRITION in United States commerce far longer than Applicant has used the mark sought to be registered, and Opposer filed its application for registration for United States registration no. 1,541,169 before Applicant filed its Application. Thus, there is no issue as to priority.

9. If Applicant is permitted to use and register its mark for its goods, as specified in the Application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's mark. Persons familiar with Opposer's mark would be likely to buy Applicant's goods as and for a good sold by Opposer. Any such confusion in trade inevitably would result in loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for its goods sold under its mark.

10. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration

would be a source of damage and injury to Opposer.

11. Opposer, since at least as early as November 1988 has used ULTIMATE NUTRITION in its trade name, and has used since at least as early as 1996 and is now using the trade name ULTIMATE NUTRITION, INC. in connection with the sale of nutritional dietary supplements, including nutritional food supplements and vitamins. Said use has been valid and continuous since said date of first use and has not been abandoned. Said trade name of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the Applicant's mark in the Application and the related nature of the goods, it is alleged that Applicant's mark in the Application so resembles Opposer's trade name previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer prays that the Application be rejected, and that the registration therein sought for the goods therein specified in International Class 005 be denied and refused and not permitted to issue as a registration, and that this opposition be sustained in favor of the Opposer.


The undersigned Opposer hereby consents and appoints Paul A. Fattibene and Arthur T. Fattibene, members of the Bar of the State of Connecticut, whose address is Fattibene and Fattibene, 2480 Post Road, Southport, Connecticut 06890, as its duly authorized agent and attorney in the matter of the opposition above-identified, to

prosecute said opposition, to transact all business in the United States Patent and Trademark Office and in the United States courts in connection with this opposition, to sign its name to all papers which may hereinafter be filed in connection therewith, and to receive all communications relating to the same.

Respectfully Submitted,

Ultimate Nutrition, Inc.

Date: 20 September 2004

By: 

Brian Rubino
Vice President

Int. Cl.: 5

Prior U.S. Cl.: 6

United States Patent and Trademark Office

Reg. No. 1,541,169

Registered May 30, 1989

TRADEMARK
PRINCIPAL REGISTER

ULTIMATE NUTRITION

ULTIMATE NUTRITION PRODUCTS, INC.
(CONNECTICUT CORPORATION)
UNIT 11
92 WESTON STREET
HARTFORD, CT 06120

FOR: VITAMINS, AND NUTRITIONAL
FOOD SUPPLEMENTS, IN CLASS 5 (U.S. CL. 6).
FIRST USE 11-0-1985; IN COMMERCE
11-0-1985.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "NUTRITION", APART FROM
THE MARK AS SHOWN.

SER. NO. 677,100, FILED 8-7-1987.

RONALD R. SUSSMAN, EXAMINING ATTOR-
NEY

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

In the Matter of Application Serial No. 76/560,054
Filed: November 13, 2003
For the Mark: **ULTIMATE 69**
Published in the Official Gazette on: June 15, 2004

TTAB

Attorney Ref. : I-794

Mail Stop: TTAB-FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

TRANSMITTAL LETTER FOR
NOTICE OF OPPOSITION

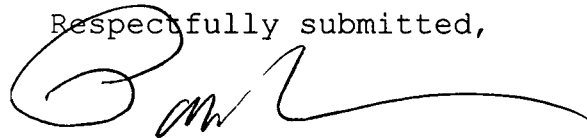
Dear Sir:

Please find **enclosed** the following:

1. Notice of Opposition, in duplicate; and
2. A Credit Card Payment Form authorizing a charge in the amount of \$300.00 for the filing fee as required under Trademark Rules of Practice §2.6(a)(17).

While no additional appeal fees are believed to be due, if any appeal fees are due related to this appeal please debit Deposit Account 06-0250 accordingly.

Respectfully submitted,



Paul A. Fattibene
Attorney for Opposer,
Ultimate Nutrition, Inc.

2480 Post Road
Southport, Connecticut 06890
Tel. 203-255-4400
Fax 203-259-0033

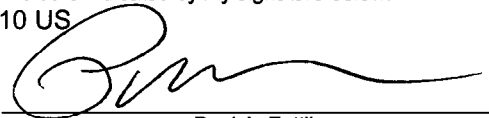
Certification of Express Mailing

I hereby certify that the above identified papers are being deposited with the United States Postal Service as Express Mail Post Office to Addressee having an Express Mail Mailing Label Number as indicated below in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on the date indicated by my signature below.

EXPRESS MAIL MAILING LABEL NUMBER: EL 209186210 US

October 4, 2004

Date



Paul A. Fattibene
Reg. No. 31,694



10-04-2004