

TTAB

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

IN THE MATTER OF the Trademark Application

“METRECARB”
Serial No. 78/368,965
Applied for on February 17, 2004

River West Brands LLC)	
)	
Opposer)	
)	
v.)	Opposition No. _____
)	
Bravo! Foods International Corp.)	
)	
Applicant)	

NOTICE OF OPPOSITION

River West Brands LLC, a Delaware limited liability company with a principal place of business at 648 West Randolph Street, Suite 400, Chicago IL, 60661 (hereinafter, “Opposer”) believes that Bravo! Foods International Corp., with a principal place of business at One 11300 US Highway 1, North Palm Beach, FL 33408 (hereinafter, “Applicant”), has filed a false application for “METRECARB”, Serial No. 78/368,965 and has engaged in inequitable conduct against Opposer through said application. Opposer believes that it will be damaged by the continued existence of Application Serial No. 78/368,965, and therefore opposes Application Serial No. 78/368,965. As grounds therefore, Opposer states as follows:

1. On information and belief, Applicant applied to register the mark “METRECARB” (Application Serial No. 78/368,965) in respect of “low carbohydrate



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lactose free milk drink” in International Class 029 on February 17, 2004 on an intent-to-use basis.

2. Opposer is the current Applicant for “METRECAL” (Application Serial No. 78/117,689) in respect of “Dietary drink mix for use as a meal replacement” in International Class 005. Application Serial No. 78/117,689 was filed by Opposer’s predecessor on March 26, 2002.

3. Applicant’s “METRECARB” so resembles Opposer’s “METRECAL”, so that it is likely that, when used on Applicant’s products, the public will be confused or deceived with consequent injury to Opposer and the public. Applicant’s application should be denied.

4. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant’s mark and will give color of exclusive statutory rights in Applicant in violation and derogation of the prior and superior rights of Opposer. Applicant’s application should be denied.

5. Opposer originally approached Applicant about a potential license to METRECAL in 2003. Opposer and Applicant spent considerable time negotiating a potential license to METRECAL prior to Applicant’s application for METRECARB. On information and belief, Applicant filed its application for METRECARB to “hold up” applicant for cash and to improve negotiating position in its bid to potentially license METRECAL from Opposer. On information and belief, Applicant derived the name METRECARB directly from METRECAL.

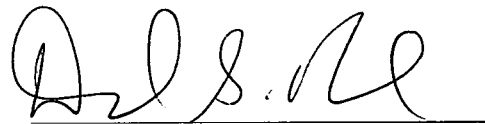
6. Applicant's application should be denied because it lacked a bona fide intent to use METRECARB in commerce when it filed its application. Opposer believes the application was solely made to extract cash or concessions in a potential licensing transaction for METRECAL.

7. Applicant's application should be denied because of the doctrine of "unclean hands".

8. Applicant's application should be denied because of Applicant's gross inequitable conduct surrounding the circumstances of the potential licensing transaction for METRECAL.

WHEREFORE, Opposer prays that this Opposition be sustained and Application Serial No. 78/368,965 be denied.

The statutory Cancellation Filing Fee of \$300 should be satisfied with the enclosed check. A duplicate copy of this Opposition is enclosed as required by 37 CFR §2.112(a).



David S. Ruder
Chairman
RIVER WEST BRANDS LLC

Certificate of Mailing

Date: January 15, 2005
RIVER WEST BRANDS LLC
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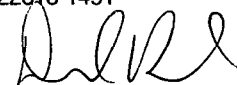
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