

ESTTA Tracking number: **ESTTA39350**

Filing date: **07/20/2005**

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

<b>Name</b>	Vivil A. Mueller GmbH & Co. KG
<b>Granted to Date of previous extension</b>	07/27/2005
<b>Address</b>	Moltkestrasse 33 77654 Offenburg, GERMANY

<b>Domestic Representative</b>	Katrin Lewertoff Sidley Austin Brown & Wood LLP 787 Seventh Avenue New York, NY 10019 UNITED STATES kzuehlke@sidley.com Phone:2128397366
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#### Applicant Information

<b>Application No</b>	78334082	<b>Publication date</b>	03/29/2005
<b>Opposition Filing Date</b>	07/20/2005	<b>Opposition Period Ends</b>	07/27/2005
<b>Applicant</b>	Vivi Trading Co, LLC 34 Stemway Rd. Trumbull, CT 06611		

UNITED STATES
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**Goods/Services Affected by Opposition**

Class 030. First Use: 20031013First Use In Commerce: 20031013 All goods and services in the class are opposed, namely: candy
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<b>Attachments</b>	DT-7067 NOO.pdf ( 40 pages )
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<b>Signature</b>	/Katrin Lewertoff/
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<b>Name</b>	Katrin Lewertoff
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<b>Date</b>	07/20/2005
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DT-7067

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

**IN THE MATTER OF APPLICATION**

Applicant: Vivi Trading Co, LLC  
Serial No.: 78/334,082  
Mark: VIVI  
Filed: November 28, 2003  
Published in the  
*Official Gazette*: March 29, 2005

-----X		
VIVIL A. MUELLER GMBH & CO. KG	:	Opposition No. _____
Opposer,	:	
v.	:	
	:	
VIVI TRADING CO, LLC	:	
Applicant.	:	
-----X		

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

VIVIL A. MUELLER GMBH & CO. KG ("Opposer"), a limited partnership duly organized and existing under the laws of the Federal Republic of Germany, and having its principal place of business at Moltkestrasse 33, 77615 Offenburg, Germany, believes it will be damaged by the registration of the mark VIVI as shown in application serial no. 78/334,082, filed on November 28, 2003 in International Class 30 for "candy" and published in the *Official Gazette* on March 29, 2005 and hereby opposes the same.

The grounds for opposition are as follows:

1. Under the trademark and trade name VIVIL Opposer has engaged in the business of manufacturing and marketing a variety of goods, including but not limited to candy, since long prior to October 13, 2003, to wit Applicant's alleged date of first use of its mark, and long prior to Applicant's filing date, November 28, 2003.
2. Opposer has secured valuable rights in the mark VIVIL based on use and registrations.
3. Opposer is the owner of a number of trademark registrations consisting of the trademark VIVIL which cover goods identical to those listed in the subject application for VIVI.
  - (a) Incontestable U.S. Registration No. 596,067 duly and legally issued on September 28, 1954 on the Principal Register of the Patent and Trademark Office for the mark VIVIL (International Class 30) as applied to "candy." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit A.
  - (b) Incontestable U.S. Registration No. 1,575,980 duly and legally issued on January 9, 1990 on the Principal Register of the Patent and Trademark Office for the mark VIVIL (International Classes 5 and 30) as applied to "dietetic/vitamin enriched candy" and "peppermint lozenges, compressed peppermint and peppermint chewing candies, candy breath mints." Said registration is the exclusive property of Opposer and is in all respects

valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit B.

(c) U.S. registration No. 2,672,412 duly and legally issued on January 7, 2003 on the Principal Register of the Patent and Trademark Office for the mark VIVIL (International Class 5) as applied to "food supplements, namely, vitamin preparations." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit C.

4. Opposer is also the owner of a number of trademark registrations consisting of or comprising the trademark VIVIL which cover a wide variety of candy products.

(a) U.S. Registration No. 2,499,503 duly and legally issued on October 23, 2001 on the Principal Register of the Patent and Trademark Office for the mark VIVIL FUN + ENERGY (International Classes 5 and 30) as applied to "pharmaceutical medicated candies containing sugar or sugar substitutes for use in treating coughs, hoarseness and sore throats, for supplementing vitamins and nutritive substances, for activating and increasing the body's power of resistance, and for wellness; chewing gum for medical purposes containing sugar or sugar substitutes for use in treating coughs, hoarseness and sore throats, for supplementing vitamins and nutrition substances, for activating and increasing the body's power of resistance, and for wellness" and "candies, also dietetic candies for non-medical purposes containing sugar substitutes, namely, compressed candies, chewing candies with liquid fillings, peppermint lozenges, peppermint

candies; chocolate bars, chocolate products, namely, chocolate candies; chocolates, also with liquid fillings containing wines, spirits or fruit preparations; chewing gum for non-medical purposes containing sugar or sugar substitutes.” Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit D.

(b) U.S. Registration No. 2,690,520 duly and legally issued on February 25, 2003 on the Principal Register of the Patent and Trademark Office for the mark VIVIL GET THE POWER (International Classes 5, 30 and 32) as applied to "soft drinks used as nutritional supplements and vitamin and mineral supplements" and "Coffee-based and tea-based beverages; confectionery products used as dietetic products for non-medical purposes using sugar substitutes, namely, tablets, chewing sweets with liquid filling, peppermint pastilles, peppermint candy; chocolates, chocolate goods, namely, chocolate candies; pralines also with liquid filling made of wines, spirits or fruit preparations; chewing gum for non-medical purposes made from sugar substitutes" and "non-alcoholic and caffeine-containing beverages, namely, energy soft drinks." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit E.

(c) U.S. Registration No. 2,747,305 duly and legally issued on August 5, 2003 on the Principal Register of the Patent and Trademark Office for the mark VIVIL CREME HIGHLIGHTS (in International Class 30) as applied to "candy." Said

registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit F.

(d) Incontestable U.S. Registration No. 1,893,246 duly and legally issued on May 9, 1995 on the Principal Register of the Patent and Trademark Office for the mark VIVIL EXTRA STARK POWER-MINTS (in International Class 30) as applied to "candy, namely, peppermint lozenges and eucalyptus menthol lozenges, as well as such lozenges made with sugar substitutes." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit G.

(e) U.S. Registration No. 1,437,026 duly and legally issued on April 21, 1987 on the Principal Register of the Patent and Trademark Office for the mark VIVIL SUGAR FREE (in International Class 5) as applied to "dietetic/vitamin enriched candy." Said registration is the exclusive property of Opposer and is in all respects valid, subsisting and in full force and effect, a printout of which from the USPTO website is attached as Exhibit H.

5. Opposer has expended, and continues to expend, both abroad and in the United States, substantial amounts of money, time and effort in advertising, promoting and popularizing its VIVIL trademarks so that the trade in general, and the purchasing public in particular, have come to know and recognize Opposer's

trademark and products and to know that the same originate with, and belong to, Opposer.

6. Opposer's mark VIVIL is arbitrary as applied to Opposer's goods. The mark is thus highly distinctive and serves as an extremely strong indicator of origin, and has obtained worldwide reputation and recognition.
7. As a consequence of Opposer's continuous and widespread use, promotion and advertising of the mark VIVIL, Opposer has acquired substantial and protectable goodwill in such mark in the United States. Moreover, the mark has been extensively used on Opposer's products for a significant period of time and is therefore instantly recognized by consumers as a symbol of the quality of Opposer's goods.
8. There is no issue of priority since Opposer's first use (and registration) of its mark far precedes Applicant's claimed date of first use in the subject application.
9. Applicant's VIVI and Opposer's VIVIL are virtually indistinguishable visually and aurally. Both are single-word, double-syllable marks.
10. The goods for which Applicant seeks registration of the VIVIL mark are identical to many of the goods for which and in connection with which Opposer's VIVIL marks have been extensively used and registered for many years. Goods marketed by Opposer necessarily would travel in the same channels of trade as, and in competition with, the goods marketed and sold by Applicant.

11. Applicant's mark is confusingly and deceptively similar to, Opposer's mark and is likely to cause confusion and mistake in the minds of the purchasing public and to deceive the purchasing public as to the source or origin of Applicant's goods. Person's familiar with Opposer's trademark would be likely to believe that Applicant's goods originate with or are sponsored by Opposer. Any such confusion in the trade could seriously injure Opposer to the extent that any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon the reputation which the Opposer has established for its products merchandised under its trademark.
  
12. If the Applicant is granted registration for the subject mark it would thereby obtain at least *prima facie* exclusive right to the use of its mark. Such registration and use would be a source of damage and injury to Opposer and Opposer's customers.


**WHEREFORE**, Opposer requests that this opposition be sustained and that application Serial. No. 78/334,082 be refused.

Please charge the filing fee in connection with this Notice of Opposition to our firm's Deposit Account No. 50-0955.

Petitioner herein appoints Katrin Lewertoff and Peter Toren as its attorneys, to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,  
VIVIL A. MUELLER GMBH & CO. KG  
By its attorneys,

Dated: July 2, 2005

By:   
Katrin Lewertoff  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 Seventh Avenue  
New York, New York 10019  
(212) 839 7366

# Exhibit A

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:38:15 ET**

**Serial Number:** 71654066 [Assignment Information](#)

**Registration Number:** 596067 [Assignment Information](#)

**Mark**



**(words only):** VIVIL

**Standard Character claim:** No

**Current Status:** This registration has been renewed.

**Date of Status:** 2005-04-18

**Filing Date:** 1953-10-01

**Transformed into a National Application:** No

**Registration Date:** 1954-09-28

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 830 -Post Registration

**Date In Location:** 2005-04-18

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. VIVIL A. MULLER GMBH & CO. KG

**Composed Of:**

COMPOSED OF VIVIL GMBH, A GERMANY LIMITED LIABILITY COMPANY

**Address:**

VIVIL A. MULLER GMBH & CO. KG  
MOLTKESTRASSE 33  
D-77615 OFFENBURG  
Fed Rep Germany  
**Legal Entity Type:** Limited Partnership  
**State or Country Where Organized:** Fed Rep Germany

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### GOODS AND/OR SERVICES

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**U.S. Class:** 046 (International Class 030)  
CANDY  
**First Use Date:** (DATE NOT AVAILABLE)  
**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

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### ADDITIONAL INFORMATION

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**Prior Registration Number(s):**  
72029

**Foreign Registration Number:** 105235  
**Foreign Registration Date:** 1908-02-21  
**Country:** Fed Rep Germany

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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2005-04-18 - Third renewal 10 year  
2005-04-18 - Section 8 (10-year) accepted/ Section 9 granted  
2005-04-18 - Assigned To Paralegal  
2005-03-22 - Combined Section 8 (10-year)/Section 9 filed  
2005-03-22 - TEAS Section 8 & 9 Received  
2003-07-02 - TEAS Change of Correspondence Received  
1995-12-06 - Second renewal 10 year  
1995-09-13 - Response received for Post Registration action  
1995-08-11 - Post Registration action mailed - Section 9

1995-06-21 - Response received for Post Registration action

1995-04-24 - Section 9 filed/check record for Section 8

1974-09-28 - First renewal

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**CORRESPONDENCE INFORMATION**

---

**Correspondent**

PETER J TOREN (Attorney of record)

PETER J TOREN  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 SEVENTH AVENUE  
NEW YORK NY 10019-6018

**Phone Number:** 212-839-7355

**Fax Number:** 212-839-559

**Domestic Representative**

DAVID TOREN

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# Exhibit B

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:38:54 ET**

**Serial Number:** 73722789

**Registration Number:** 1575980

**Mark (words only):** VIVIL

**Standard Character claim:** No

**Current Status:** This registration has been renewed.

**Date of Status:** 2000-02-03

**Filing Date:** 1988-04-18

**Transformed into a National Application:** No

**Registration Date:** 1990-01-09

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2002-02-27

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#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. VIVIL A. MULLER GMBH & CO. KG

**Composed Of:**

VIVIL GMBH, A PARTNER

**Address:**

VIVIL A. MULLER GMBH & CO. KG

MOLTKESTRASSE 33

D-77654 OFFENBURG

Fed Rep Germany

**Legal Entity Type:** Limited Partnership

**State or Country Where Organized:** Fed Rep Germany

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#### GOODS AND/OR SERVICES

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**International Class:** 005  
DIETETIC/VITAMIN ENRICHED CANDY  
**First Use Date:** 1970-03-00  
**First Use in Commerce Date:** 1977-02-00

**Basis:** 1(a), 44(e)

**International Class:** 030  
PEPPERMINT LOZENGES, COMPRESSED PEPPERMINT AND PEPPERMINT CHEWING  
CANDIES, CANDY BREATH MINTS  
**First Use Date:** 1903-01-00  
**First Use in Commerce Date:** 1908-12-00

**Basis:** 1(a), 44(e)

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#### ADDITIONAL INFORMATION

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**Prior Registration Number(s):**

596067  
1286226  
1437026

**Foreign Application Number:** 20466/30VZ

**Foreign Registration Number:** 1114832

**Foreign Registration Date:** 1987-11-27

**Country:** Fed Rep Germany

**Foreign Filing Date:** 1987-10-17

**Foreign Expiration Date:** 1997-10-17

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

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2003-05-07 - TEAS Change of Correspondence Received

2000-02-03 - First renewal 10 year

2000-02-03 - Section 9 granted/check record for Section 8

1999-10-28 - Combined Section 8 (10-year)/Section 9 filed

1996-02-07 - Section 8 (6-year) accepted & Section 15 acknowledged

1995-06-06 - Section 8 (6-year) and Section 15 Filed

1990-01-09 - Registered - Principal Register

1989-10-17 - Published for opposition  
1989-09-16 - Notice of publication  
1989-07-25 - Approved for Pub - Principal Register (Initial exam)  
1989-06-05 - Communication received from applicant  
1989-05-05 - Communication received from applicant  
1989-05-23 - Final refusal mailed  
1989-03-06 - Communication received from applicant  
1988-09-01 - Non-final action mailed  
1988-08-18 - Case file assigned to examining attorney  
1988-07-20 - Case file assigned to examining attorney  
1988-07-20 - Case file assigned to examining attorney  
1988-05-16 - Communication received from applicant

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**CORRESPONDENCE INFORMATION**

---

**Correspondent**

DAVID TOREN (Attorney of record)

DAVID TOREN  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 SEVENTH AVENUE  
NEW YORK NY 10019-6018

**Phone Number:** 212-839-7355

**Fax Number:** 212-839-5599

**Domestic Representative**

DAVID TOREN

---

# Exhibit C

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:39:13 ET**

**Serial Number:** 75448082

**Registration Number:** 2672412

**Mark (words only):** VIVIL

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2003-01-07

**Filing Date:** 1998-03-11

**Transformed into a National Application:** No

**Registration Date:** 2003-01-07

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2003-08-14

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. VIVIL A. Muller GmbH & Co. KG

**Composed Of:**

VIVIL GmbH

**Address:**

VIVIL A. Muller GmbH & Co. KG

Moltkestrasse 33

D-77654 Offenbach

Fed Rep Germany

**Legal Entity Type:** Limited Partnership

**State or Country Where Organized:** Fed Rep Germany

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**GOODS AND/OR SERVICES**

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**International Class:** 005

FOOD SUPPLEMENTS, NAMELY, VITAMIN PREPARATIONS

**First Use Date:** 1991-08-02

**First Use in Commerce Date:** 1996-02-27

**Basis:** 1(a)

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

1575980

1740812

1754805

1774873

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2003-01-07 - Registered - Principal Register

2002-11-06 - Allowed for Registration - Principal Register (SOU accepted)

2002-10-30 - Case file assigned to examining attorney

2002-10-24 - Statement of use processing complete

2002-07-22 - Amendment to Use filed

2002-03-03 - Extension 5 granted

2002-02-03 - Extension 5 filed

2002-07-22 - PAPER RECEIVED

2002-07-18 - Case file assigned to examining attorney

2002-07-09 - Case file assigned to examining attorney

2002-02-05 - Communication received from applicant

2001-07-31 - Extension 4 granted

2001-07-11 - Extension 4 filed

2001-03-02 - Extension 3 granted

2001-01-26 - Extension 3 filed  
2000-09-27 - Extension 2 granted  
2000-08-03 - Extension 2 filed  
2000-01-12 - Extension 1 granted  
1999-11-30 - Extension 1 filed  
1999-08-03 - Notice of allowance - mailed  
1999-05-11 - Published for opposition  
1999-04-09 - Notice of publication  
1999-02-01 - Approved for Pub - Principal Register (Initial exam)  
1998-12-18 - Communication received from applicant  
1998-07-17 - Non-final action mailed  
1998-07-09 - Case file assigned to examining attorney

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

DAVID TOREN (Attorney of record)

DAVID TOREN  
SIDLEY AUSTIN BROWN & WOOD LLP  
INTELLECTUAL PROPERTY GROUP  
787 7TH AVE  
NEW YORK NY 10019-6018

**Domestic Representative**

DAVID TOREN

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# Exhibit D

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:39:41 ET**

**Serial Number:** 75772880

**Registration Number:** 2499503

**Mark**

**VIVIL**  
**Fun + Energy**

**(words only):** VIVIL FUN + ENERGY

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2001-10-23

**Filing Date:** 1999-08-10

**Transformed into a National Application:** No

**Registration Date:** 2001-10-23

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2002-07-01

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. VIVIL A. MULLER GmbH & Co. KG

**Address:**

VIVIL A. MULLER GmbH & Co. KG  
Moltkestrasse 33

D77654 Offenburg

Fed Rep Germany

**Legal Entity Type:** KG

**State or Country Where Organized:** Fed Rep Germany

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### GOODS AND/OR SERVICES

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**International Class:** 005

Pharmaceutical medicated candies containing sugar or sugar substitutes for use in treating coughs, hoarseness and sore throats, for supplementing vitamins and nutritive substances, for activating and increasing the body's power of resistance, and for wellness; chewing gum for medical purposes containing sugar or sugar substitutes for use in treating coughs, hoarseness and sore throats, for supplementing vitamins and nutrition substances, for activating and increasing the body's power of resistance, and for wellness

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

**International Class:** 030

Candies, also dietetic candies for non-medical purposes containing sugar substitutes, namely, compressed candies, chewing candies with liquid fillings, peppermint lozenges, peppermint candies; chocolate bars, chocolate products, namely, chocolate candies; chocolates, also with liquid fillings containing wines, spirits or fruit preparations; chewing gum for non-medical purposes containing sugar or sugar substitutes

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

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### ADDITIONAL INFORMATION

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**Prior Registration Number(s):**

596067

1286226

2194748

2253485

**Foreign Registration Number:** 39855846

**Foreign Registration Date:** 1998-12-03

**Country:** Fed Rep Germany

**Foreign Expiration Date:** 2008-09-30

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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2003-03-11 - TEAS Change of Correspondence Received  
2001-10-23 - Registered - Principal Register  
2001-07-31 - Published for opposition  
2001-07-18 - Notice of publication  
2000-09-28 - Approved for Pub - Principal Register (Initial exam)  
2000-09-18 - Communication received from applicant  
2000-09-18 - Examiner's amendment mailed  
2000-05-08 - Communication received from applicant  
1999-12-08 - Non-final action mailed  
1999-11-17 - Case file assigned to examining attorney

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### **CORRESPONDENCE INFORMATION**

---

**Correspondent**

David Toren (Attorney of record)

DAVID TOREN  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 SEVENTH AVENUE  
NEW YORK NY 10019-6018

**Phone Number:** 212-839-7355**Fax Number:** 212-839-5599**Domestic Representative**

David Toren

# Exhibit E

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:40:12 ET**

**Serial Number:** 76382051

**Registration Number:** 2690520

**Mark (words only):** VIVIL GET THE POWER

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2003-02-25

**Filing Date:** 2002-03-14

**Transformed into a National Application:** No

**Registration Date:** 2003-02-25

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2003-03-25

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. VIVIL A. Mueller GmbH & Co. KG

**Composed Of:**

VIVIL GmbH (company-with limited liability of Germany)

**Address:**

VIVIL A. Mueller GmbH & Co. KG

Moltkestrasse 33

77654 Offenburg

Fed Rep Germany

**Legal Entity Type:** Limited Partnership

**State or Country Where Organized:** Fed Rep Germany

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**GOODS AND/OR SERVICES**

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**International Class:** 005

Soft drinks used as nutritional supplements and vitamin and mineral supplements

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

**International Class:** 030

Coffee-based and tea-based beverages; confectionery products used as dietetic products for non-medical purposes using sugar substitutes, namely, tablets, chewing sweets with liquid filling, peppermint pastilles, peppermint candy; chocolates, chocolate goods, namely, chocolate candies; pralines also with liquid filling made of wines, spirits or fruit preparations; chewing gum for non-medical purposes made from sugar substitutes

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

**International Class:** 032

Non-alcoholic and caffeine-containing beverages, namely, energy soft drinks

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

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**ADDITIONAL INFORMATION**

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**Foreign Registration Number:** 30137485

**Foreign Registration Date:** 2001-08-28

**Country:** Fed Rep Germany

**Foreign Expiration Date:** 2011-06-30

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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2003-02-25 - Registered - Principal Register

2002-12-03 - Published for opposition

2002-11-13 - Notice of publication

2002-09-28 - Approved for Pub - Principal Register (Initial exam)

2002-08-26 - Communication received from applicant

2002-08-26 - PAPER RECEIVED

2002-07-01 - Non-final action mailed

2002-06-17 - Case file assigned to examining attorney

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

Shifra N. Malina (Attorney of record)

Shifra N. Malina  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 7TH AVE  
NEW YORK NY 10019

**Phone Number:** (212) 9062585

**Domestic Representative**

David Toren

**Phone Number:** (212) 9062585

---

# Exhibit F

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:40:36 ET**

**Serial Number:** 78156215

**Registration Number:** 2747305

**Mark (words only):** VIVIL CREME HIGHLIGHTS

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2003-08-05

**Filing Date:** 2002-08-21

**Transformed into a National Application:** No

**Registration Date:** 2003-08-05

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2003-08-12

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#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. VIVIL A. Mueller GmbH & Co. KG

**Composed Of:**

VIVIL GmbH (company with limited liability of Germany)

**Address:**

VIVIL A. Mueller GmbH & Co. KG

Moltkestrasse 33

Offenburg 77654

Fed Rep Germany

**Legal Entity Type:** Partnership

**State or Country Where Organized:** Fed Rep Germany

---

#### GOODS AND/OR SERVICES

---

**International Class:** 030

candy

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

---

#### ADDITIONAL INFORMATION

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**Disclaimer:** "CREME"

**Prior Registration Number(s):**

596067

1286226

2191859

**Foreign Application Number:** 30209291.930

**Foreign Registration Number:** 30209291

**Foreign Registration Date:** 2002-06-13

**Country:** Fed Rep Germany

**Foreign Filing Date:** 2002-02-21

**Foreign Expiration Date:** 2012-02-29

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

---

2003-08-05 - Registered - Principal Register

2003-05-13 - Published for opposition

2003-04-23 - Notice of publication

2003-03-11 - Approved for Pub - Principal Register (Initial exam)

2003-02-13 - Communication received from applicant

2003-02-13 - PAPER RECEIVED

2003-01-13 - Non-final action mailed

2002-12-24 - Case file assigned to examining attorney

---

#### CORRESPONDENCE INFORMATION

---

**Correspondent**

David Toren (Attorney of record)

David Toren  
Sidley Austin Brown & Wood LLP  
787 Seventh Avenue  
New York NY 10019

**Phone Number:** 212 839-7355

**Fax Number:** 212 839-5599

**Domestic Representative**

David Toren

**Phone Number:** 212 839 7355

**Fax Number:** 212 839 5599

---

# Exhibit G

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:41:00 ET**

**Serial Number:** 74413165

**Registration Number:** 1893246

**Mark (words only):** VIVIL EXTRA STARK POWER-MINTS

**Standard Character claim:** No

**Current Status:** Section 8 and 15 affidavits have been accepted and acknowledged.

**Date of Status:** 2001-02-14

**Filing Date:** 1993-07-13

**Transformed into a National Application:** No

**Registration Date:** 1995-05-09

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 14

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2002-03-27

---

#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. VIVIL A. MULLER GMBH & CO. KG

**Address:**

VIVIL A. MULLER GMBH & CO. KG

Moltkestrasse 33

D-7600 Offenburg

German Dem Rep

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** German Dem Rep

---

#### GOODS AND/OR SERVICES

---

**International Class:** 030

candy; namely, peppermint lozenges and eucalyptus menthol lozenges, as well as such lozenges made

with sugar substitutes

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

---

### ADDITIONAL INFORMATION

---

**Prior Registration Number(s):**

1575980

1720508

1745805

**Foreign Registration Number:** 2035308

**Foreign Registration Date:** 1993-04-30

**Country:** German Dem Rep

**Foreign Expiration Date:** 2002-10-06

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

---

2002-03-26 - Section 7 request abandoned

2001-05-24 - Post Registration action mailed - Section 7

2001-03-31 - Section 7 amendment filed

2001-02-14 - Section 8 (6-year) accepted & Section 15 acknowledged

2000-10-11 - Section 8 (6-year) and Section 15 Filed

2000-10-11 - Post Registration action correction

1995-05-09 - Registered - Principal Register

1995-03-22 - Notice of Allowance canceled

1995-03-22 - ITU claim deleted

1994-12-27 - Notice of allowance - mailed

1994-10-04 - Published for opposition

1994-09-02 - Notice of publication

1994-05-13 - Approved for Pub - Principal Register (Initial exam)

1994-04-21 - Communication received from applicant

1993-12-27 - Non-final action mailed

1993-11-02 - Case file assigned to examining attorney

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

KARIN SEGALL (Attorney of record)

KARIN SEGALL  
DARBY & DARBY P.C.  
805 THIRD AVENUE  
NEW YORK, NY 10022

**Domestic Representative**

Darby & Darby P.C.

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# Exhibit H

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-07-20 15:41:40 ET**

**Serial Number:** 73538527

**Registration Number:** 1437026

**Mark**



**(words only):** VIVIL SUGAR FREE

**Standard Character claim:** No

**Current Status:** A Section 8 affidavit has been accepted.

**Date of Status:** 1992-11-09

**Filing Date:** 1985-05-20

**Transformed into a National Application:** No

**Registration Date:** 1987-04-21

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2002-03-13

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. VIVIL A. MULLER GMBH & CO. KG

**Composed Of:**

COMPOSED OF VIVIL GMBH, A LIMITED LIABILITY COMPANY

**Address:**

VIVIL A. MULLER GMBH & CO. KG  
MOLTKESTRASSE 33  
D-7600 OFFENBURG  
Fed Rep Germany  
**Legal Entity Type:** Limited Partnership  
**State or Country Where Organized:** Fed Rep Germany

---

### GOODS AND/OR SERVICES

---

**International Class:** 005  
DIETETIC/VITAMIN ENRICHED CANDY  
**First Use Date:** (DATE NOT AVAILABLE)  
**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 44(e)

---

### ADDITIONAL INFORMATION

---

**Disclaimer:** "SUGAR FREE"

**Prior Registration Number(s):**  
1286226

**Foreign Registration Number:** 1073980  
**Foreign Registration Date:** 1985-02-21  
**Country:** Fed Rep Germany  
**Foreign Expiration Date:** 1994-06-16

---

### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

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### PROSECUTION HISTORY

---

2003-05-06 - TEAS Change of Correspondence Received  
1992-11-09 - Section 8 (6-year) accepted  
1992-08-12 - Section 8 (6-year) filed  
1987-04-21 - Registered - Principal Register  
1987-01-27 - Published for opposition  
1986-12-22 - Notice of publication  
1986-12-02 - Approved for Pub - Principal Register (Initial exam)

1986-10-03 - Communication received from applicant

1986-08-11 - Final refusal mailed

1986-08-05 - Case file assigned to examining attorney

1986-06-30 - Communication received from applicant

1986-03-20 - Final refusal mailed

1986-03-05 - Case file assigned to examining attorney

1986-01-17 - Communication received from applicant

1985-07-15 - Non-final action mailed

1985-07-01 - Case file assigned to examining attorney

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

DAVID TOREN (Attorney of record)

DAVID TOREN  
SIDLEY AUSTIN BROWN & WOOD LLP  
787 SEVENTH AVENUE  
NEW YORK NY 10019-6018

**Phone Number:** 212-839-7355

**Fax Number:** 212-839-5599

**Domestic Representative**

TOREN, MCGEADY & ASSOCIATES

---