

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

In the Matter of Application Serial No. 78/339,070  
Filed: **December 10, 2003**  
For the Mark: **ULTIMATE WOMAN'S MULTI**  
Published in the Official Gazette on: June 14, 2005

Attorney Ref.: **I-827**

Mail Stop: TTAB-FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

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

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



08-11-2005

U.S. Patent & TMOc/TM Mail RptDt. #64

Certification of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P. O. Box 1451, Alexandria, VA 22313-1451 on the date indicated by my signature below.

**August 9, 2005**

Date



Paul A. Fattibene  
Reg. No. 31,694

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In the Matter of Application Serial No. **78/339,070**  
Filed: **December 10, 2003**  
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ULTIMATE NUTRITION, INC.		
	Opposer	
v.		Opposition No.
ANABOLIC LABORATORIES, INC.		
	Applicant	

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**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 78/339,070, hereinafter Application, filed on December 10, 2003 by Anabolic Laboratories, Inc., 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 California corporation, having its principal place of business at 26021 Commercentre Drive, Lake Forest, California 92630.

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As grounds of opposition, it is alleged that:

1. Applicant seeks to register ULTIMATE WOMEN'S MULTI as a trademark for nutritional and dietary supplements, in International Class 005.
2. The Application is based on an intent to use the mark and does not allege a date of first use of the mark.
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 any use by Applicant. 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 before the filing date of the Application and for a substantial period has used ULTIMATE as a mark, in connection with the sale of nutritional and dietary supplements, including nutritional food supplements and vitamins. Said use has been valid and continuous since the date of first use and has not been abandoned. Said ULTIMATE mark 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 ULTIMATE mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive. Attached **Exhibit 2** is packaging illustrating Opposer's use of the mark ULTIMATE in connection with the sale of nutritional and dietary supplements. Attached **Exhibit 3** is a label illustrating Opposer's use of the mark ULTIMATE in connection with the sale of nutritional and dietary supplements.

12. 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: 8/4/05

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



**ULTIMATE  
NUTRITION®**

# ULTIMATE CRUNCH

**ULTIMATE  
NUTRITION®**

**16 Grams of Quality Protein**

**Vitamins**

**Minerals**

**Calcium**

**Great Taste!**

# ULTIMATE CRUNCH

**Chocolate Almond Crunch**

**Exhibit 2**

ULTIMATE  
NUTRITION

# Super Complete Formula

Natural Vitamin E  
Calcium Ascorbate  
Natural Carotenoids

270 tablets

Ultimate multivitamin &  
multimineral supplement

Ultimate Nutrition, Inc.  
Farmington, CT U.S.A. 06034  
© 2000 Ultimate Nutrition, Inc.

### Supplement Facts

Serving size: 3 tablets	Amount per 6 tablets	% Daily Value
Vitamin A (as Beta-Carotene)	20,000 IU	400%
Alpha-Carotene	378 mcg	*
Zeaxanthin	76 mcg	*
Cryptoxanthin	92 mcg	*
Lutein	69 mcg	*
*The above are natural mixed carotenoids derived from <i>Dunaliella Salina</i>		
Vitamin D3 (as Calcium Ascorbate)	15,000 IU	200%
Vitamin D2	400 IU	100%
Vitamin E (as natural d-alpha)	400 IU	1333%
Thiamine	100 mg	6666%
Riboflavin	100 mg	5882%
Niacin (as Inositol)	100 mg	500%
Vitamin B6	100 mg	5000%
Vitamin B12	400 mcg	1000%
Vitamin B1	100 mg	1666%
Biotin	300 mcg	1000%
Pantothenic Acid	100 mg	1000%
Calcium (amino acid chelate and calcium ascorbate)	1000 mg	100%
Iron (amino acid chelate)	18 mg	100%
Whey (whey amino acid chelate)	500 mg	100%
Hydrolyzed Whey (whey amino acid chelate)	500 mg	100%
Zinc (amino acid chelate)	22.5 mg	150%
Selenium (as seleno-L-homocysteine)	70 mcg	100%
Copper (amino acid chelate)	3 mg	150%
Manganese (amino acid chelate)	10 mg	500%
Chromium (as chromium polynicotinate)	200 mcg	167%
Potassium (amino acid chelate)	95 mg	9%
Bioflavonoids (from lemon)	250 mg	*
Glutamic Acid	100 mg	*
Glycine (G)	100 mg	*
Choline (as bitartrate)	100 mg	*
Inositol	100 mg	*
Para-Amino Benzoic Acid	50 mg	*
Guar Gum	20 mg	*
Guar Gum Powder	20 mg	*
Isosorbide	20 mg	*
Acetone Cherry	10 mg	*
Boron (amino acid chelate)	3 mg	*

\* Daily Value not established.  
Other ingredients: cellulose, dicalcium phosphate and magnesium stearate.  
**SUGGESTED USE:** As a dietary supplement, take three tablets, three times per day with meals.

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Exhibit 3