

ESTTA Tracking number: **ESTTA48326**

Filing date: **10/12/2005**

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

Name	Intracell Nutrition, Inc.
Granted to Date of previous extension	10/12/2005
Address	433 Hackensack AvenueSixth Floor Hackensack, NJ 07601 UNITED STATES

Attorney information	Lawrence R. Robins Finnegan, Henderson, Farabow, Garrett & Dunner LLP 901 New York Avenue Washington, DC 20001 UNITED STATES larry.robins@finnegan.com, docketing@finnegan.com Phone:202-408-4000
-----------------------------	--

Applicant Information

Application No	76603308	Publication date	06/14/2005
Opposition Filing Date	10/12/2005	Opposition Period Ends	10/12/2005
Applicant	CUMMINGS, Joseph James 345 Atwells Avenue		

Providence, RI 02903 UNITED STATES

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Meal replacement powders

Attachments	0001023.TIF (4 pages)
--------------------	-------------------------

Signature	/Lawrence R. Robins/
------------------	----------------------

Name	Lawrence R. Robins
-------------	--------------------

Date	10/12/2005
-------------	------------

or “Opposer”), believes that it will be damaged by Applicant’s registration of Applicant’s Mark and hereby opposes the registration of Applicant’s Mark.

As grounds for opposition, it is alleged that:

1. Since at least as early as June 30, 1984, INTRACELL has used the marks MANNA and FOODFORM MANNA (the “MANNA MARKS”) in connection with the promotion and sale of dietary food supplements for human consumption.

2. INTRACELL is the owner of U.S. Trademark Registration No. 1,983,524 for the mark FOODFORM MANNA, issued on July 2, 1996, and covering “dietary food supplements for human consumption.” That registration is incontestable. INTRACELL is also the owner of U.S. Trademark No. 2,422,411 for the mark MANNA, issued on January 23, 2001, and covering “dietary food supplements for human consumption.”

3. INTRACELL has continuously used its MANNA MARKS in interstate commerce from at least June 30, 1984, to the present in connection with the promotion, offering for sale, sale, and/or rendering of its products. INTRACELL has extensively and widely used the MANNA MARKS to promote its products in print and on the Internet.

4. INTRACELL has used its MANNA MARKS in connection with its products since well before the filing date of Applicant’s Mark.

5. INTRACELL has established extremely valuable goodwill in its MANNA MARKS by virtue of its substantial promotional and marketing efforts, the expenditure of

considerable sums in advertising and promotional activities, and strong sales and/or use of its products offered under the mark.

6. In view of the inherent and marketplace strength of INTRACELL's MANNA MARKS, the duration and extent of INTRACELL's use of its MANNA MARKS, the duration and extent of INTRACELL's advertising of its MANNA MARKS, the nationwide nature of INTRACELL's use of its MANNA MARKS, the federal registration of INTRACELL's MANNA MARKS, and the degree of recognition of INTRACELL's MANNA MARKS, INTRACELL's MANNA MARKS are extremely well known and distinctive and have been well known and distinctive since long before the filing of Applicant's Mark.

12. Applicant's Mark so resembles INTRACELL's previously used and registered MANNA MARKS as to be likely to cause confusion, or to cause mistake, or to deceive, thereby damaging INTRACELL.

WHEREFORE, Opposer prays that Application Serial No. 76/603,308 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer encloses a Filing Fee of \$300. If the Filing Fee is found to be insufficient for any reason, please charge such deficiency to our Deposit Account No. 06-0916.

Respectfully submitted,

INTRACELL NUTRITION, INC.

Dated: October 12, 2005

By: 

Lawrence R. Robins
Jonathan M. Gelchinsky
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
55 Cambridge Parkway
Cambridge, MA 02142
(617)452-1600

Attorneys for Opposer