

ESTTA Tracking number: **ESTTA50167**

Filing date: **10/25/2005**

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	Dow AgroSciences LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	9330 Zionsville Road Indianapolis, IN 46268 UNITED STATES		

Attorney information	Julia Spoor Gard Barnes & Thornburg 11 South Meridian Indianapolis, IN 46204-3535 UNITED STATES jgard@btlaw.com Phone:317-231-1313		
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Applicant Information

Application No	78501877	Publication date	09/27/2005
Opposition Filing Date	10/25/2005	Opposition Period Ends	10/27/2005
Applicant	Pioneer Hi-Bred International, Inc. 700 Capital Square 400 Locust Street Des Moines, IA 50309 UNITED STATES		

Goods/Services Affected by Opposition

Class 029.

All goods and services in the class are opposed, namely: Soybean Oil

Related Proceedings	Opposer has also filed Notice of Opposition to Applicant's Serial No. 78486344
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Attachments	78501877.pdf (4 pages)
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Signature	/jgard/
Name	Julia Spoor Gard
Date	10/25/2005

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


Dow AgroSciences LLC)	
)	
Opposer,)	In the matter of trademark application
)	Serial No. 78/501877; Published in the
)	Official Gazette September 27, 2005
v.)	
)	
Pioneer Hi-Bred International, Inc.)	Opposition No.
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Dow AgroSciences LLC, a Delaware limited liability company with a place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268, believes that it will be damaged by the registration of the mark NUTRIUM and Design shown in Serial No. 78/501877 and hereby opposes registration of that mark.

The grounds for the opposition are as follows:

1. Opposer is a distributor of agricultural products, including edible oils.
2. Opposer is the owner of U.S. trademark registration serial 2946433 of the mark NATREON for edible oils, namely canola oil. This registration issued May 3, 2005 and claims a date of first use in commerce of October 31, 2000.
3. Opposer is also the owner of U.S. trademark application serial no. 78160122 of the mark NATREON CANOLA OIL and design for edible oils, namely, canola oil. This intent-to-use application was filed September 3, 2002.
4. Opposer is also the owner of U.S. trademark application serial no. 78669973 of the mark NATREON and Design for edible oils, namely, sunflower oil. This intent-to-use application was filed July 13, 2005.

5. Opposer markets and sells the edible oils sold under the NATREON marks for sale to the food service industry.
6. Opposer's edible oils are low linolenic oils, with no trans fats.
7. Opposer's edible oils are stable for approximately 42 hours.
8. Opposer has spent significant amounts of time and money promoting and advertising the NATREON Marks ("Marks") in connection with edible oils that are low in saturated fat and have high stability, and has acquired significant goodwill in the marks because of their association by relevant purchasers with edible oils that are low in saturated fat and have high stability.
9. Applicant seeks to register the confusingly similar mark NUTRIUM and design  in connection with soybean oil, as evidenced by its intent-to-use application filed October 10, 2004, and published in the Official Gazette on September 27, 2005.
10. The dominant portion of Applicant's mark is NUTRIUM.
11. The dominant portion of Applicant's mark is similar in sound and sight to Opposer's Marks.
12. Applicant's soybean oils are edible oils.
13. Upon information and belief, Applicant markets its edible oils as low linolenic, with no trans fats.
14. Upon information and belief, Applicant's edible oils are high in saturated fats.
15. Upon information and belief, Applicant's oils are stable for a maximum of 22 hours, or about half the time that Opposer's oils are stable.
16. Because Applicant's oils are high in saturated fats and are stable for only half the time that Opposer's oils are stable, Applicant's oils are inferior to Opposer's oils.
17. Soybean oils are in the zone of natural expansion of Opposer's edible oils.

18. Applicant's edible oils are substantially similar to the oils sold under Opposer's Marks, and are closely associated in the relevant public's mind with Opposer's oils.
19. Applicant's oils are directly competitive with Opposer's oils.
20. Upon information and belief, Applicant markets and sells edible oils under the NUTRIUM mark for sale in the food service industry.
21. Applicant's oils are marketed to the same purchasers and through the same channels of trade as Opposer's edible oils.
22. Applicant's mark is likely to cause confusion, or to cause mistake or to deceive because relevant purchasers familiar with Opposer's marks are likely to believe that Applicant's oils are Opposer's oils, or that Applicant's goods are in some way affiliated with Opposer's goods or related to Opposer's goods.
23. Applicant's use of the mark NUTRIUM in connection with the goods described in the opposed application falsely suggests a connection with Opposer within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).
24. Applicant's mark is also likely to cause confusion, or to cause mistake or to deceive and to damage Opposer's goodwill in the Marks because consumers are likely to associate the advantages of Opposer's oils, namely, high stability and low saturated fats, with Applicant's oils, which have low stability and are high in saturated fats.
25. Applicant's mark is also likely to dilute Opposer's Marks through tarnishment, because Opposer's marks will suffer negative associations through Applicant's use of a confusingly similar mark in connection with edible oils which have low stability and are high in saturated fats.

26. Upon information and belief, Applicant has no rights in the NUTRIUM and design mark prior to Opposer's rights in NATREON.
27. Opposer would be injured by the granting to Applicant of the registration sought because Applicant's mark so resembles Opposer's Marks as to be likely, when used on Applicant's goods, to cause confusion, or to cause mistake, or to deceive, to falsely suggest a connection with Opposer, to dilute Opposer's Marks through tarnishment, and to damage Opposer's goodwill in the Marks.

WHEREFORE, Opposer believes that it will be damaged by the registration of NUTRIUM and design to Applicant and prays that the registration be denied.

Please charge the filing fee of \$300.00 to Deposit Account No. 100435 (6257-78547).

Respectfully submitted,

DOW AGROSCIENCES LLC

Date: October 25, 2005



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Dow AgroSciences LLC