TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LEINER HEALTH SERVICES CORP., a Delaware corporation,	:	
Opposer,	:	
	:	Opposition No.
vs.	:	_____
BIO SAN LABORATORIES, INC. a New Hampshire corporation,	:	
Applicant.	:	

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury the within **NOTICE OF OPPOSITION (IN TRIPLICATE) AND FILING FEE** were forwarded to BOX FEE - TTAB, Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by depositing same with the United States Postal Service, first class mail, postage prepaid, this 5th day of December, 2005.

SHERYL R. CONAWAY

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NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 76/515,182 for MAXIMUM LIFE in International Class 5 filed May 19, 2003 by BIO SAN LABORATORIES, INC., a New Hampshire corporation, having its principal place of business at 8 Bowers Road, Derry, New Hampshire 03038 and published for opposition purposes in the Official Gazette on September 6, 2005, Leiner Health

MAP-LHP-1954

12-12-2005

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

Services Corp., a Delaware corporation, having its principal place of business at 901 East 233rd Street, Carson, California 90745, believes that it will be damaged by registration of the mark in the above-identified application and hereby opposes same.

The grounds for opposition are as follows:

(a) Since long prior to the filing date of the application opposed herein, the Opposer, Leiner Health Services Corp., has been in the business of manufacturing and selling vitamins and dietary food supplements and over-the-counter pharmaceutical products, all of which constitute personal care products which are related to one another.

(b) Since long prior to the filing date of the application opposed herein, the Opposer, Leiner Health Services Corp., has continuously used the mark YOUR LIFE and its family of MAXIMUM marks as trademarks to designate vitamins and dietary food supplements.

3. Opposer is the owner of the following trademarks and service mark:

(a) YOUR LIFE, Registration No. 1,029,138 dated January 6, 1976 to designate vitamins, alleging a date of first use of October, 1972, the application for renewal having been accepted by the United States Patent and Trademark Office on December 5, 1995. Registration No. 1,029,138 is incontestible under 15 U.S.C. §1065.

(b) YOUR LIFE, Registration No. 1,267,613 dated February 21, 1984 to designate a dietary control pharmaceutical, alleging a date of first use of June 1, 1980, the application for renewal having been accepted by the United States Patent and Trademark Office on December 15, 2003. Registration No. 1,267,613 is incontestible under 15 U.S.C. §1065.

(c) YOUR LIFE & DESIGN, Registration No. 1,402,829 dated July 29, 1986 to designate vitamins and dietary food supplements, alleging a date of first use of October 30, 1985, the Affidavit under §§8 and 15 therefor having been accepted by the United States Patent and Trademark Office on January 7, 1992. Registration No. 1,402,829 is incontestible under 15 U.S.C. §1065.

(d) YOUR LIFE & DESIGN, Registration No. 1,596,015 dated May 15, 1990 to designate vitamins and food supplements, alleging a date of first use of April 4, 1989, the application for renewal having been accepted by the United States Patent and Trademark Office on December 8, 2000. Registration No. 1,596,015 is incontestible under 15 U.S.C. §1065.

(e) YOUR LIFE, Registration No. 2,084,936 dated July 29, 1997, alleging a date of first use of October 8, 1996 to designate providing information regarding vitamins and dietary food supplements by means of a global computer network, the Affidavit under §§8 and 15 therefor having been accepted by the United States Patent and Trademark Office on January 23, 2003.

Registration No. 2,084,936 is incontestible under 15 U.S.C. §1065.

(f) MAXIMUM MEN'S, Registration No. 2,547,172 dated March 12, 2002, alleging a date of first use of January 3, 2001 to designate vitamins and dietary food supplements.

(g) MAXIMUM WOMEN'S, Registration No. 2,547,173 dated March 12, 2002, alleging a date of first use of January 3, 2001 to designate vitamins and dietary food supplements.

(h) MAXIMUM PAK, Registration No. 1,374,543 dated December 12, 1985 to designate vitamins and food supplements, alleging a date of first use of April 1, 1985, the Declaration under §§8 and 15 therefor having been accepted by the United States Patent and Trademark Office on April 22, 1991. Registration No. 1,374,543 is incontestible under 15 U.S.C. §1065.

5. On May 19, 2003, Applicant filed a trademark application to register the mark MAXIMUM LIFE. The mark is proposed to be used to designate nutritional dietary supplements containing natural in International Class 5.

6. Because of Opposer's long and continuous manufacture and sale vitamins and dietary food supplements and use of its marks, YOUR LIFE, and the family of MAXIMUM trademarks (i.e., MAXIMUM MEN'S, MAXIMUM WOMEN'S and MAXIMUM PAK), for the stated goods and services, the marks, and each of them, have become well known and are recognized by the public and the industry as identifying Opposer as the source of the stated goods and services.

7. The use by Applicant of the trademark opposed herein for the goods identified in International Class 5 will be likely to cause confusion, mistake or deception with Opposer's aforesaid YOUR LIFE trademark and service mark and the MAXIMUM family of marks and result in the belief that Applicant or its goods are in some way legitimately connected with, or sponsored or approved by, Opposer.

8. Any use Applicant has made or may make of the MAXIMUM LIFE trademark is or will be without Opposer's consent or permission.

9. As a result of the foregoing and Opposer's long prior use of its marks, registration of the mark sought by Applicant in International Class 5 would violate §2(d) of the Trademark Act, as the Applicant's trademark MAXIMUM LIFE so resembles Opposer's previously used and registered trademarks and service mark, YOUR LIFE, and its family of MAXIMUM marks, as to be likely, when applied to Applicant's designated goods, to cause confusion, or mistake or to deceive.

For the above reasons, the grant of a registration to Applicant of the mark sought to be registered for the goods recited in the opposed application in International Class 5 will damage Opposer because such registration and the rights emanating therefrom will be inconsistent with the right of Opposer to continue its use of YOUR LIFE and to continue the use of the family of MAXIMUM marks on and in connection with its goods and

services and will interfere in the normal and natural expansion of Opposer's business.

WHEREFORE, Oppose prays that the registration sought by Applicant be refused.

Opposer submits herewith the requisite $300.00 filing fee.

Please address all correspondence to Michael A. Painter, Esq., Isaacman, Kaufman & Painter, 8484 Wilshire Boulevard, Suite 850, Beverly Hills, California 90211, (323) 782-7700.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER
A Professional Corporation

By: _____
Michael A. Painter
Attorneys for Opposer,
LEINER HEALTH SERVICES CORP.

MAP:src
Dated: December 5, 2005
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