

ESTTA Tracking number: **ESTTA58652**

Filing date: **12/21/2005**

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	U.S. Bariatric, LLC
Granted to Date of previous extension	12/21/2005
Address	4800 Northeast 20th Terrace Suite 303 Fort Lauderdale, FL 33308 UNITED STATES

Attorney information	Karen L. Stetson, Esq. Law Offices of Karen L. Stetson, Esq. P.O. Box 403023 Miami, FL 33140 UNITED STATES maf@kstetsonlaw.com
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### Applicant Information

Application No	78487940	Publication date	08/23/2005
Opposition Filing Date	12/21/2005	Opposition Period Ends	12/21/2005
Applicant	Kommers, Elaine F. 5701 SW 30 Street Miami, FL 33155 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 2004/01/01 First Use In Commerce: 2004/03/01  
All goods and services in the class are opposed, namely: Distributorship services in the field of nutraceutical, dietary supplements, health, and wellness products

Attachments	Wellness Building Blocks Notice of Opposition.pdf ( 4 pages )
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Signature	/Karen L. Stetson/
Name	Karen L. Stetson, Esq.
Date	12/21/2005

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

In re: Application of Elaine F. Kommers  
Serial No. 78487940  
Date Filed: September 22, 2004  
Date Published: August 23, 2005  
Mark: WELLNESS BUILDING BLOCKS

U.S. BARIATRIC, LLC,

Opposer,

Opposition No.

vs.

ELAINE F. KOMMERS,

Applicant.

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**NOTICE OF OPPOSITION**

U.S. BARIATRIC, LLC ("USB"), by and through undersigned counsel, believes that it will be damaged by the registration of the mark shown in Serial No. 78487940 for services in International Class 35, namely, distributorship services in the field of nutraceutical, dietary supplements, health, and wellness products and hereby opposes the registration of the mark WELLNESS BUILDING BLOCKS for such services. As grounds therefor, USB states as follows:

1. Opposer USB is a limited liability company organized and existing under the laws of Florida with its principal place of business in Fort Lauderdale, Florida.
2. Upon information and belief, Applicant is an individual residing in Miami, Florida and doing business in Miami, Florida as Wellness Building Blocks.
3. Opposer USB is in the business of selling vitamins and mineral supplements for bariatric patients.

4. Opposer began using the BUILDING BLOCKS mark in interstate commerce at least as early as January 6, 2004 and, therefore, Opposer is the prior user of the BUILDING BLOCKS mark for vitamins and mineral supplements.

5. Substantial time, effort and monies have been expended in connection with the advertising, marketing and promotion of Opposer USB's goods under its BUILDING BLOCKS mark.

6. As a result of the goods provided by Opposer, the BUILDING BLOCKS mark has become well known, and Opposer USB has established extensive goodwill and public recognition for the BUILDING BLOCKS mark as an exclusive identification of the services offered and sold by Opposer USB.

7. On September 22, 2004, Applicant filed an application under Section 1 (a) of the Lanham Act for WELLNESS BUILDING BLOCKS in International Class 35 for distributorship services in the field of nutraceutical, dietary supplements, health, and wellness products.

8. Upon information and belief, there was no bona fide use of Applicant's mark in interstate commerce prior to the filing of the use-based application for its registration under Section 1 (a) of the Lanham Act.

9. Pursuant to the Board's request, Applicant disclaimed the term "Wellness" and, therefore, the two marks are identical in terms of their distinctive and dominant parts entitled to trademark protection.

10. Therefore, Applicant's WELLNESS BUILDING BLOCKS mark is virtually identical to Opposer USB's BUILDING BLOCKS mark, causing viewers to perceive Applicant's mark as indicating an association or connection with Opposer USB's BUILDING BLOCKS mark and offering goods and services related to those offered by Opposer.

11. Moreover, upon information and belief, Applicant has knowingly adopted, advertised, and used the wording "BUILDING BLOCKS" as part of its mark to identify its services for the purposes of (i) trading on the goodwill and reputation of Opposer USB, (ii) capitalizing on the substantial expenditures made by Opposer USB in advertising and promoting the BUILDING BLOCKS mark and (iii) misleading the purchasing public into believing Applicant's services are authorized, connected with, sponsored, or approved by Opposer USB.

12. Opposer USB would be damaged by the registration of Applicant's proposed mark in that any use by Applicant of the mark WELLNESS BUILDING BLOCKS in connection with the advertising and promotion and/or offering of distributorship services in the field of nutraceutical, dietary supplements, health, and wellness products is likely to cause confusion, mistake or deception as to the source or origin of Applicant's services, is likely to suggest falsely a sponsorship, connection, license, or association of Applicant's services with or by Opposer USB, and is likely to cause serious and irreparable damage to the reputation and goodwill of Opposer USB in its BUILDING BLOCKS mark, for which Opposer USB is without an adequate remedy at law.

13. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of the mark WELLNESS BUILDING BLOCKS. Such a registration would be a source of damage and injury to Opposer.

WHEREFORE. Opposer U.S. BARIATRIC, LLC, deems that it is or will be damaged by the registration of the mark shown in Serial No. 78487940 and opposes the registration thereof.

Respectfully submitted,

KAREN L. STETSON, ESQ.  
Attorneys for Opposer  
U.S. BARIATRIC, LLC  
P.O. Box 403023  
Miami, FL 33140

By: /Karen L. Stetson/  
Karen L. Stetson  
Florida Bar No. 742937  
Meredith A. Frank  
Florida Bar No. 502235

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that the foregoing was sent via U.S. Mail to Elaine F. Kommers, 5701 S.W. 30<sup>th</sup> Street, Miami, FL 33155 on this 21<sup>st</sup> day of December, 2005.

By: /Karen L. Stetson/  
Karen L. Stetson