

ESTTA Tracking number: **ESTTA65449**

Filing date: **02/08/2006**

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	International Nutrition Company
Granted to Date of previous extension	02/15/2006
Address	16, De Zodde Loosdrecht, NETHERLANDS

Attorney information	Norman H. Zivin Cooper & Dunham LLP 1185 Ave. of the Americas New York, NY 10036 UNITED STATES nzivin@cooperdunham.com Phone:212-278-0400
----------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------

Applicant Information

Application No	79007884	Publication date	10/18/2005
Opposition Filing Date	02/08/2006	Opposition Period Ends	02/15/2006
International Registration No.	0840377	International Registration Date	05/17/2004
Applicant	Toyo Shinyaku Co., Ltd. 19-27, Hakataekimae 2-chome Hakata-ku,; Fukuoka-shi; Fukuoka-ken, 812-0011 , JAPAN		

Goods/Services Affected by Opposition


<p>Class 003. All goods and seVICES in the class are opposed, namely: Soaps; cosmetics; cosmetics containing oligomeric proanthocyanidin extracted from pine bark; soaps and shampoos containing oligomeric proanthocyanidin extracted from pine bark</p>
<p>Class 029. All goods and seVICES in the class are opposed, namely: Processed foods, namely, soy beans, dried cabbage, fermented cabbage, raisins, and dried prunes, in the form of tablets, granular, powder and liquid mainly containing extractives from pine bark; dietary supplements in powder, granular, hard-capsular, soft-capsular, liquid, paste and tablet form containing oligomeric proanthocyanidin extracted from pine bark</p>
<p>Class 032. All goods and seVICES in the class are opposed, namely: Soft drinks; preparations for making soft drinks, namely, concentrates containing oligomeric proanthocyanidin extracted from pine bark, syrups containing oligomeric proanthocyanidin extracted from pine bark, powders containing oligomeric</p>

proanthocyanidin extracted from pine bark, and granules containing oligomeric proanthocyanidin extracted from pine bark; soft drinks containing oligomeric proanthocyanidin extracted from pine bark; fruit juices containing oligomeric proanthocyanidin extracted from pine bark

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3036389	Application Date	07/12/2002
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	FLAVAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/02/11 First Use In Commerce: 2005/02/11 VITAMINS, FOOD SUPPLEMENTS, NAMELY, MINERALS, ENZYMES, AND AMINO ACIDS		

Attachments	76977835#TMSN.gif (1 page) NOTICE OF OPPOSITION.pdf (4 pages)
-------------	----------------------------------------------------------------------

Signature	/norman h. zivin/
Name	Norman H. Zivin
Date	02/08/2006

NOTICE OF OPPOSITION

INTERNATIONAL NUTRITION COMPANY, a corporation, having a place of business at 16, De Zodde, Loosdrecht, The Netherlands (hereinafter "Opposer"), believes that it will be damaged by the issuance of a registration to TOYO SHINYAKU CO., LTD., a joint stock company of Japan, having a place of business at 19-27, Hakataekimae 2-chome Hakata-ku, Fukuoka-shi, Fukuoka-ken, 812-0011, Japan (hereinafter "Applicant"), and hereby opposes issuance of the registration.

As grounds for the opposition, Opposer states as follows:

1. Opposer is engaged in the sale and distribution of food supplements, foods, soaps, pharmaceutical and veterinary preparations and cosmetics, among other goods. The active ingredient of Opposer's products is oligomeric proanthocyanidins, extracted from pine bark, grape seed, or both.

2. Opposer distributes and sells goods comprising oligomeric proanthocyanidins in international and interstate commerce. Upon information and belief, the

public and trade identify Opposer as a leading supplier of oligomeric proanthocyanidins, extracted from pine bark, grape seed or both.

3. Opposer is the owner of Registration No. 3,036,389, for the mark FLAVAN, covering vitamins, food supplements, namely minerals, enzymes and amino acids, issued on an application filed July 12, 2002.

4. Opposer has commenced use of its mark FLAVAN in connection with the sale and distribution of vitamins and food supplements, namely minerals, enzymes, and amino acids.

5. On May 17, 2004, almost two years after the filing of Opposer's application to register its mark FLAVAN, Applicant filed an application to register the mark FLAVANGENOL for processed foods, namely, soy beans, dried cabbage, fermented cabbage, raisins, and dried prunes, in the form of tablets, granular, powder and liquid mainly containing extractives from pine bark, dietary supplements in powder, granular, hard-capsular, soft-capsular, liquid, paste and tablet form containing oligomeric proanthocyanidin extracted from pine bark, soaps,

cosmetics, cosmetics containing oligomeric proanthocyanidin extracted from pine bark, soaps and shampoos containing oligomeric proanthocyanidin extracted from pine bark, soft drinks, preparations for making soft drinks, namely, concentrates containing oligomeric proanthocyanidin extracted from pine bark, syrups containing oligomeric proanthocyanidin extracted from pine bark, powders containing oligomeric proanthocyanidin extracted from pine bark, and granules containing oligomeric proanthocyanidin extracted from pine bark, soft drinks containing oligomeric proanthocyanidin extracted from pine bark, and fruit juices containing oligomeric proanthocyanidin extracted from pine bark. The active ingredient in Applicant's goods is stated to be oligomeric proanthocyanidins extracted from pine bark.

6. Upon information and belief, Applicant intends to use the confusingly similar mark FLAVANGENOL in connection with the sale and distribution of goods which are the same as or related to the goods sold by Opposer.

7. Upon information and belief, consumers, upon viewing or hearing the mark FLAVANGENOL in connection with the sale of goods containing oligomeric proanthocyanidins,

will mistakenly believe that the source of those goods is Opposer.

8. Applicant's use of the mark FLAVANGENOL, in association with the goods for which registration is sought by Applicant, is likely to cause confusion, or to cause mistake or to deceive.

9. By reason of Opposer's filing of its application for registration long prior to Applicant's filing of its application to register a nearly identical and therefore confusingly similar mark for use in association with the same or related goods, Opposer has rights superior to any rights of Applicant.

10. The registration to Applicant of the mark FLAVANGENOL on the Principal Register will interfere with Opposer's enjoyment of its rights in the mark FLAVAN, to Opposer's substantial detriment.

WHEREFORE, Opposer prays that its opposition be sustained and that the registration sought by Applicant be refused.