

ESTTA Tracking number: **ESTTA79679**

Filing date: **05/05/2006**

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	Vitamin World, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	90 Orville Drive Bohemia, NY 11716 UNITED STATES		

Attorney information	Scott B Fisher Jaspan Schlesinger Hoffman LLP 300 Garden City Plaza Garden City, NY 11530 UNITED STATES lhechtel@jshllp.com, sfisher@jshllp.com Phone:516 746 8000
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Applicant Information

Application No	78533180	Publication date	04/11/2006
Opposition Filing Date	05/05/2006	Opposition Period Ends	05/11/2006
Applicant	T.C. Pharmaceutical Industries Co., Ltd. 39/13 Mu 8, Ekachai Road Bangbon Sub District, Bangbon District Bangkok, 10500 THAILAND		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: food supplement preparations and nutritional supplement preparations in the form of capsule containing crataegus, melissa and ginkgo billoba extract in garlic oil

Attachments	Notice of Opposition.pdf (5 pages)(168823 bytes)
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Signature	/scott b fisher/
Name	Scott B Fisher
Date	05/05/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

In the Matter of Trademark Application :

Applicant : T. C. Pharmaceutical Industries Co., Ltd.
Serial No. : 78/533,180
Filed : December 15, 1004
Mark : **CIRCURE**
Int'l Class : 005
For : food supplement preparations and nutritional
preparations in the form of capsule containing
melissa and ginkgo billoba extract in garlic
Published : April 11, 2006

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Vitamin World, Inc., :
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 Opposer, :
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 vs. : **Opposition**
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 T. C. Pharmaceutical Industries Co., Ltd.:
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 Applicant. :
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Opposer, Vitamin World, Inc. (the "Opposer" or "Vitamin World") is a duly organized and existing under the laws of the State of New York, with its principal place of business at 90 Orville Drive, Bohemia, New York 11716.

Vitamin World believes that it will be damaged by the registration of the CIRCURE covering "food supplement preparations and nutraceutical preparations in the form of capsule containing crataegus, nutmeg extract in garlic oil" in International Class 005 (the "CIRCURE Mark"), by applicant, T. C. Pharmaceutical Industries Co. Ltd., an existing and existing under the laws of Thailand, with a principal place of business at 8, Ekachai Road Bangbon Sub District, Bangbon District, Bangkok 10700 ("Applicant"), and hereby opposes the same.

As grounds in support for this opposition, Opposer states:

1. Opposer is the owner of all right, title, and interest in Trademark Registration No. 2,439,176 registered March 2004 in the Trademark Register for the trademark CIRCULEG (referred to as the "CIRCULEG Mark") in the following goods:

"nutritional supplements" in International Class 005;

(See Exhibit A, attached hereto).

2. Opposer manufactures and markets in Thailand various nutraceutical supplements containing vitamins under its well-known CIRCULEG Mark.

3. Opposer has continuously used its distinctive CIRCULEG Mark at least as early as January 1999, long before Applicant's filing of the application for the CIRCURE Mark in 2004 for the CIRCURE Mark.

4. Opposer has been actively using the CIRCULEG Mark in extensive and continuous use, Opposer has acquired a significant reputation in its CIRCULEG Mark and the goods offered thereunder. Opposer's use of the CIRCULEG Mark is not confused by Applicant's use of CIRCURE, which is confusingly similar to the CIRCULEG Mark in appearance, sound, connotation, and commercial impression. Opposer's use of the CIRCULEG Mark is not confused with Applicant's use of CIRCURE Mark.

5. Opposer has expended considerable time, money, and effort in developing and promoting its CIRCULEG Mark, its products sold under the CIRCULEG Mark, and in developing substantial and exclusive goodwill and reputation in the CIRCULEG Mark and the goods with which the CIRCULEG Mark is used.

6. As a result of these expenditures, combined with the high quality goods under the CIRCULEG Mark, the relevant consumers have come to recognize CIRCULEG Mark as favorably distinguishing Opposer's goods from others.

7. On information and belief, Applicant filed an application for the CIRCURE Mark has not commenced use of its CIRCURE Mark. The Opposer's use of the CIRCULEG Mark at least five (5) years before the Applicant filed the application for the CIRCURE Mark.

8. Opposer has clear priority with respect to the CIRCULEG Mark, or any mark confusingly similar thereto, in the field of dietary supplements, dietary supplements and related goods and services in Class 005.

9. The dominant portion of Applicant's CIRCURE in appearance, sound, spelling, connotation and commercial significance is identical to the dominant portion of Opposer's CIRCULEG Mark.

10. Applicant seeks to register a mark that is confusingly similar to the CIRCULEG Mark and will be used in connection with goods and services that are identical or similar to those goods sold under Opposer's CIRCULEG Mark.

11. Applicant's goods which are or may be sold under the mark and will be offered through the same or similar channels of distribution to a similar class of consumers as Opposer's goods.

12. Applicant's use and registration of CIRCURE in connection with dietary supplement preparations and nutritional supplement preparations containing crataegus, melissa and ginkgo biloba extract in connection with the sale of such goods is likely to cause injury because such use is likely to cause confusion and/or damage to Opposer's consumers to believe that such Applicant's goods, products and services are made by, sponsored by, or somehow associated with Opposer.

13. These consumers, upon purchasing, using or consuming Applicant's goods, products and services bearing the CIRCURE mark are likely to be confused and deceived and are likely to believe in the existence of a connection between the Applicant or Applicant's goods and Opposer, and that the goods are CIRCULEG Mark.

14. Applicant's use and registration of the CIRCULEG Mark is likely to cause confusion with the distinctive quality of and diminish or detract from the prior registered trademark of the Depositor, the CIRCULEG Mark. Opposer in and to the CIRCULEG Mark.

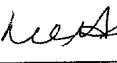
15. Please charge any additional fees to Depositor's account. All correspondence should be directed to Depositor. Direct all correspondence in connection with this opposition to Depositor.

WHEREFORE, refusal of the registration applied for by Applicant, Serial No. 78/533,180 is respectfully submitted to be in order and is hereby requested.

Dated: May 5, 2006
Garden City, New York

Respectfully,

Vitamin Water

By: 

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Attorneys for
Vitamin Water