

ESTTA Tracking number: **ESTTA92441**

Filing date: **07/31/2006**

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	Vitamins Playwear Inc.
Granted to Date of previous extension	07/30/2006
Address	100 West 33rd Street Suite 800 New York, NY 10001 UNITED STATES

Attorney information	Amy F. Divino Wolf Block Schorr and Solis-Cohen LLP 250 Park Avenue New York, NY 10177 UNITED STATES pto@wolfblock.com Phone:212-986-1116
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### Applicant Information

Application No	78515188	Publication date	01/31/2006
Opposition Filing Date	07/31/2006	Opposition Period Ends	07/30/2006
Applicant	Manifatture Lord S.r.l. S. Egidio alla Vibrata Teramo, 64016 ITALY		

### Goods/Services Affected by Opposition

Class 025. First Use: 1997/00/00 First Use In Commerce: 1997/00/00  
All goods and services in the class are opposed, namely: pants, jackets, shirts, skirts, mini-dresses and mini-skirts, all made of denim and stretch denim

Attachments	V Vitamina Notice of Opposition.pdf ( 23 pages )(607833 bytes )
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Signature	/AFD/
Name	Amy F. Divino
Date	07/31/2006

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

-----X		
Vitamins Playwear, Inc.	:	Application No.: 78/515,188
	:	
Opposer,	:	Mark: V VITAMINA JEANS and Design
	:	
v.	:	Filed: November 11, 2004
	:	
Manifatture Lord S.r.l.,	:	Published: January 31, 2006
	:	
Applicant.	:	Opposition No.: _____
-----X		

**NOTICE OF OPPOSITION**

Vitamins Playwear, Inc. (hereinafter "Opposer"), a corporation duly organized and existing under the laws of the State of New York, having its principal place of business at 100 West 33rd Street, New York, New York 10001, believes it will be damaged by registration of the mark shown in the above-captioned application in the name of Manifatture Lord S.r.l. (hereinafter "Applicant"), and hereby opposes the registration of said mark.

As grounds for this opposition, Opposer declares as follows:

Background

1. On information and belief, Applicant is the owner of Application Serial No. 78/515,188 (the " '188 Application") for the mark V VITAMINA JEANS and Design for "pants, jackets, shirts, skirts, mini-dresses and mini-skirts, all made of denim and stretch denim" in International Class 25 (hereinafter "Applicant's Goods").

2. On information and belief, the '188 Application was filed by Applicant in the U.S. Patent and Trademark Office on November 11, 2004, based on a claim of actual use of the V VITAMINA JEANS and Design mark in commerce since 1997 under Trademark Act

Section 1(a).

3. On information and belief, the term "VITAMINA" is an Italian term which means "vitamin" in the English language.

4. The '188 Application was published for opposition purposes in the *Official Gazette* of the U.S. Patent and Trademark Office dated January 31, 2006.

5. Opposer is in the business of designing, manufacturing and selling apparel and other goods for infants and children throughout the United States and elsewhere.

6. Opposer and its predecessor in interest, adopted and for many years and since long prior to any date of first use upon which Applicant can rely, have continuously used the mark VITAMINS for children's wearing apparel and related goods. Opposer's VITAMINS mark is the subject of Registration No. 1,362,018 for children's wearing apparel in International Class 25 (see Exhibit 1 for a complete list of the identified goods). Said registration is now incontestable pursuant to the provisions of Section 15 of the Trademark Act (as amended). 15 U.S.C. §1065.

7. Additionally, Opposer has adopted and used the marks VITAMINS BABY and VITAMINS KIDS, both with and without a design for children's wearing apparel and related goods. Opposer's VITAMINS BABY and VITAMINS KIDS marks are the subject of Registrations Nos. 2,469,417, 2,550,905, 2,556,587, and 2,557,079 for apparel, layettes, diaper bags and gift sets, among other things (see Exhibit 2 for complete lists of the identified goods).

8. Opposer has also adopted and used the mark MULTI VITAMINS for children's apparel and related goods. Opposer's MULTI VITAMINS mark is the subject of Registration No. 2,968,340 for, among other things, children's apparel (see Exhibit 3 for a complete list of the identified goods).

9. Further, Opposer has adopted and used the mark STERLING BABY BY VITAMINS for gift sets. Opposer's STERLING BABY BY VITAMINS mark is the subject of Application No. 78/735,569 for gift sets (see Exhibit 4 for a complete list of the identified goods) (Opposer's VITAMINS, VITAMINS BABY, VITAMINS KIDS, MULTI VITAMINS and STERLING BABY BY VITAMINS marks are hereinafter collectively referred to as "Opposer's VITAMINS Marks").

10. Because Opposer has continuously used Opposer's VITAMINS mark in commerce long prior to Applicant's alleged first use date of 1997, priority of use belongs to Opposer.

11. Opposer has invested a great deal of money and effort in advertising and promoting Opposer's goods sold under Opposer's VITAMINS Marks and is continuing to spend considerable amounts of money in promoting such goods. Goods sold by Opposer in association with Opposer's VITAMINS Marks have been promoted and sold throughout the country. Opposer, by the aforesaid extensive use of Opposer's VITAMINS Marks, and by the promotional efforts in connection therewith, has built up a valuable goodwill associated with Opposer's VITAMINS Marks, and because of such use and promotion, Opposer's VITAMINS Marks have acquired a secondary meaning in the minds of the public in connection with Opposer and the goods of Opposer.

#### Likelihood of Confusion

12. Applicant's V VITAMINA JEANS and Design mark, as applied to Applicant's Goods, is confusingly similar to Opposer's VITAMINS Marks, as applied to the goods of Opposer, and is likely to cause confusion, mistake, or deception among the general and consuming public as to whether Applicant's Goods originate with Opposer, or are licensed,

authorized or sponsored by Opposer or are promoted with Opposer's approval.

13. Furthermore, any defect, objection or fault found with Applicant's Goods marketed under the V VITAMINA JEANS and Design mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for its products and merchandise under Opposer's VITAMINS Marks.

14. By reason of the foregoing, Applicant's registration of the V VITAMINA JEANS and Design mark herein opposed will cause injury and damage to Opposer, and to Opposer's right in Opposer's VITAMINS Marks and to the use thereof as described herein.

#### Conclusion

WHEREFORE, Opposer requests that Applicant's '188 Application be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

#### Power of Attorney

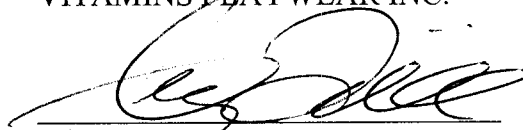
Opposer herein appoints Martin G. Raskin, Amy F. Divino, Joshua L. Raskin, David B. Sunshine, Jennifer D. Silverman and William H. Dippert members of the bar of the State of New York, its attorneys to prosecute the above opposition with full powers of substitution and revocation and to transact all business in the U.S. Patent and Trademark Office connected therewith; correspondence address: Wolf Block Schorr and Solis-Cohen LLP, 250 Park Avenue, New York, New York 10177, tel. 212-986-1116, fax 212-986-0604, e-mail: [pto@wolfblock.com](mailto:pto@wolfblock.com).

Respectfully submitted,

VITAMINS PLAYWEAR INC.

Dated: July 31, 2006

By:



Martin G. Raskin, Esq.

Amy F. Divino, Esq.

David B. Sunshine, Esq.

250 Park Avenue

New York, New York 10177

Tel 212-986-1116

Fax 212-986-0604

Email: [pto@wolfblock.com](mailto:pto@wolfblock.com)

*Counsel for Opposer*

***EXHIBIT 1***



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**Word Mark** VITAMINS

**Goods and Services** IC 025. US 039. G & S: CHILDREN'S WEARING APPAREL, NAMELY, JOGGING SUITS, CREEPERS, OVERALLS, JACKETS, PANTS, SHIRTS, SNOWSUITS, CLOTH DIAPERS, PANTIES, DRESSES AND DIAPER SETS CONSISTING OF SHORT DRESSES AND PANTIES OR PANTS AND PANTIES. FIRST USE: 19840524. FIRST USE IN COMMERCE: 19840524

**Mark Drawing Code** (1) TYPED DRAWING

**Design Search Code**

**Serial Number** 73482430

**Filing Date** May 29, 1984

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 16, 1985

**Registration Number** 1362018

**Registration Date** September 24, 1985

**Owner** (REGISTRANT) CELEBRITY INTERNATIONAL, INC. CORPORATION NEW YORK 112 WEST 34TH STREET NEW YORK NEW YORK 10001

(LAST LISTED OWNER) VITAMINS PLAYWEAR INC. CORPORATION NEW YORK SUITE 800 100 WEST 33RD STREET NEW YORK NEW YORK 10001

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** MARTIN G. RASKIN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL



**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050420.

**Renewal** 1ST RENEWAL 20050420

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Indicator** LIVE

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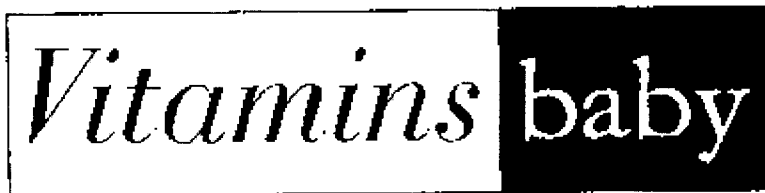
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**Word Mark** VITAMINS BABY

**Goods and Services** IC 024. US 042 050. G & S: layettes comprising towels, and blankets; and blankets. FIRST USE: 20000125. FIRST USE IN COMMERCE: 20000125

IC 018. US 001 002 003 022 041. G & S: diaper bags. FIRST USE: 20000125. FIRST USE IN COMMERCE: 20000125

IC 025. US 022 039. G & S: layettes comprising t-shirts, body suits, hats, booties, bibs, coverups, coveralls, sleepers and gowns; cloth bibs; sleepwear; pajamas; shirts; pants; booties; hats; headbands; jackets; coveralls; overalls; shortalls; skirts; dresses; skorts; short pants; tank tops; jog suits; swimwear; creepers; underwear; snow suits; pram suits; fleece garments, namely fleece sweatshirts and fleece sweat pants, polar fleece shirts and polar fleece jackets; mittens and gloves; hats; vests; gift sets comprising layettes comprising t-shirts, body suits, hats, booties, cloth bibs, coverups, coveralls, sleepers, and gowns, and sleepwear; sweaters; diaper sets comprising shortened dress and panty sets; diaper sets comprising shirt and short pants sets; and jeans. FIRST USE: 20000125. FIRST USE IN COMMERCE: 20000125

IC 028. US 022 023 038 050. G & S: gift sets comprising plush toys and rattles. FIRST USE: 20000125. FIRST USE IN COMMERCE: 20000125

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 26.11.10 - Rectangles divided once into two sections

**Serial Number** 76013052

**Filing Date** March 30, 2000

**Current Filing Basis** 1A

**Original Filing Basis** 1A  
**Published for Opposition** April 24, 2001  
**Registration Number** 2469417  
**Registration Date** July 17, 2001  
**Owner** (REGISTRANT) Vitamins Playwear Inc. CORPORATION NEW YORK 100 West 33d Street, Suite 800 New York NEW YORK 10001  
**Attorney of Record** Martin G. Raskin  
**Prior Registrations** 1362018  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BABY" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	VITAMINS KIDS
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Athletic fleecewear, warmup suits, jackets, outerwear, sweaters, shirts, blouses, playsuits, short sets, pant sets, pants, jeans, skorts, skirts, overalls, dresses, rompers, swim suits, sleepwear, knit tops, shorts, bodysuits. FIRST USE: 20001020. FIRST USE IN COMMERCE: 20001020
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	75938560
<b>Filing Date</b>	March 8, 2000
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	January 30, 2001
<b>Registration Number</b>	<b>2550905</b>
<b>Registration Date</b>	March 19, 2002
<b>Owner</b>	(REGISTRANT) Vitamins Playwear Inc. CORPORATION NEW YORK 100 West 33rd Street Suite 800 New York NEW YORK 10001
<b>Attorney of Record</b>	Martin G. Raskin
<b>Prior Registrations</b>	1362018
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KIDS" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL

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**Typed Drawing****Word Mark** VITAMINS BABY**Goods and Services** IC 018. US 001 002 003 022 041. G & S: diaper bags. FIRST USE: 20000306. FIRST USE IN COMMERCE: 20000522

IC 024. US 042 050. G &amp; S: layettes comprising towels, and blankets; and blankets. FIRST USE: 20000306. FIRST USE IN COMMERCE: 20000522

IC 025. US 022 039. G &amp; S: layettes comprising t-shirts, body suits, hats, booties, bibs, coverups, coveralls, sleepers and gowns; bibs; sleepwear; pajamas; shirts; pants; booties; hats; headbands; jackets; coveralls; overalls; shortalls; skirts; dresses; skorts; short pants; tank tops; active wear; jog suits; swimwear; creepers; underwear; vests; gift sets comprising layettes comprising t-shirts, body suits, hats, booties, bibs, coverups, coveralls, sleepers, and gowns, and sleepwear; sweaters; diaper sets comprising shortened dress and panty sets; diaper sets comprising shirt and short pants sets; and jeans. FIRST USE: 20000306. FIRST USE IN COMMERCE: 20000522

IC 028. US 022 023 038 050. G &amp; S: gift sets comprising plush toys and rattles. FIRST USE: 20000306. FIRST USE IN COMMERCE: 20000522

**Mark Drawing Code** (1) TYPED DRAWING**Design Search Code****Serial Number** 75706078**Filing Date** May 13, 1999**Current Filing Basis** 1A**Original Filing Basis** 1B**Published for Opposition** May 30, 2000**Registration Number** 2556587**Registration** April 2, 2002

**Date****Owner** (REGISTRANT) Vitamins Playwear Inc. CORPORATION NEW YORK 100 West 33rd Street Suite  
800 New York NEW YORK 10001**Attorney of  
Record**

Martin G. Raskin

**Prior  
Registrations**

1362018

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<b>Word Mark</b>	VITAMINS KIDS
<b>Goods and Services</b>	IC 025. US 022 039. G & S: athletic fleecewear, warmup suits, jackets, outerwear, sweaters, shirts, blouses, playsuits, short sets, pant sets, pants, jeans, skorts, skirts, overalls, dresses, rompers, swim suits, sleepwear, knit tops, shorts, bodysuits. FIRST USE: 20001020. FIRST USE IN COMMERCE: 20001020
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.11.02 - Plain single line rectangles; Rectangles (single line) 26.11.20 - Rectangles inside one another 26.11.21 - Rectangles that are completely or partially shaded
<b>Serial Number</b>	76012288
<b>Filing Date</b>	March 29, 2000
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	February 13, 2001
<b>Registration Number</b>	<b>2557079</b>
<b>Registration Date</b>	April 2, 2002
<b>Owner</b>	(REGISTRANT) Vitamins Playwear Inc. CORPORATION NEW YORK 100 West 33rd Street, Suite 800 New York NEW YORK 10001
<b>Attorney of Record</b>	Martin G. Raskin

**Prior Registrations** 1362018  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KIDS" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
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<b>Word Mark</b>	MULTI VITAMINS
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Children's apparel, namely, layettes comprising caps, booties, sleepwear, coveralls, bodysuits, sweaters, creepers, jog suits, t-shirts, pants, cloth eating bibs. FIRST USE: 20030300. FIRST USE IN COMMERCE: 20030300
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Design Search Code</b>	
<b>Serial Number</b>	78236727
<b>Filing Date</b>	April 11, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 20, 2004
<b>Registration Number</b>	2968340
<b>Registration Date</b>	July 12, 2005
<b>Owner</b>	(REGISTRANT) Vitamins Playwear Inc. CORPORATION NEW YORK 100 West 33rd Street, Suite 800 New York NEW YORK 10001
<b>Attorney of Record</b>	Martin G. Raskin
<b>Prior Registrations</b>	1362018;2469417;2550905;2556587;2557079;AND OTHERS
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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*EXHIBIT 4*



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**Word Mark** STERLING BABY BY VITAMINS

**Goods and Services** IC 025. US 022 039. G & S: Gift sets including, but not limited to, clothing, blankets and cards.  
FIRST USE: 20041000. FIRST USE IN COMMERCE: 20041000

**Standard Characters**  
Claimed

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Design Search Code**

**Serial Number** 78735569

**Filing Date** October 18, 2005

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) Vitamins Playwear, Inc. CORPORATION NEW YORK 100 West 33rd Street,  
Suite 800 New York NEW YORK 10001

**Attorney of Record** Amy F. Divino

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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