

ESTTA Tracking number: **ESTTA133591**

Filing date: **04/04/2007**

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 sfisher@jshllp.com, khirasawa@jshllp.com Phone:516-746-8000
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Applicant Information

Application No	76663712	Publication date	03/06/2007
Opposition Filing Date	04/04/2007	Opposition Period Ends	04/05/2007
Applicant	HispanoNatura Enterprises, Inc. 968 N. Durfee Ave. So. El Monte, CA 91733 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and sevicees in the class are opposed, namely: Dietary supplements
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Attachments	DOCSOPEN- #541664-v1-Vitamin_World_Opposition_FEMGEST_v__FEMTEC.pdf (5 pages) (15290 bytes) Femgest - Exhibit A.pdf (2 pages)(50334 bytes)
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Signature	/scott b. fisher/
Name	Scott B. Fisher
Date	04/04/2007

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

In the Matter of Trademark Application

Applicant : HispanoNatura Enterprises, Inc.
Serial No. : 76/663,712
Filed : July 27, 2006
Mark : FEMTEC
Int'l Class : 5
For : Dietary supplements
Published : March 6, 2007

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Vitamin World, Inc., :
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 Opposer, :
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 vs. : Opposition No.: _____
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 HispanoNatura Enterprises, Inc., :
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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 Delaware corporation with a principal place of business at 90 Orville Drive, Bohemia, New York 11716.

Vitamin World believes that it will be damaged by the registration of FEMTEC covering "Dietary supplements" in International Class 5 (the "FEMTEC Mark" or the "Applicant's Mark"), by applicant, HispanoNatura Enterprises, Inc. ("Applicant"), a

California corporation having a principal place of business at 968 N. Durfee Ave. So., El Monte, California 91733, and hereby opposes the same.

As grounds in support for this opposition, Opposer alleges the following:

1. Opposer, by duly recorded assignment, is the owner of all right, title and interest in United States Trademark Registration No. 2,438,301, registered March 27, 2001, on the Principal Register for the trademark FEMGEST (“FEMGEST Mark”), covering the following goods:

“Medicated topical transdermal creams for application to irritated or itchy skin” in International Class 5.

Affidavits under Sections 8 and 15 of the Trademark Act (15 U.S.C. § 1065) were filed, accepted and acknowledged by the United States Patent and Trademark Office.

Furthermore, Opposer’s FEMGEST Mark has acquired distinctiveness as a result of its continuous and exclusive use since at least February 15, 1997. Therefore, Opposer’s right to use the FEMGEST Mark on said goods is incontestable. (See Exhibit “A”).

2. Opposer manufactures and markets in the United States, and beyond, medicated topical transdermal creams for application to irritated or itchy skin, and other goods, products and services under its famous and well-known mark, FEMGEST.

3. Opposer has been actively expanding its use of its FEMGEST Mark. Through such extensive and continuous use, Opposer has acquired significant and valuable interest in the FEMGEST Mark. This interest will be injured by Applicant’s use of the FEMTEC Mark, which is substantially similar to Opposer’s valuable FEMGEST Mark and confusingly similar in appearance, sound, connotation, and commercial

impression to Opposer's valuable FEMGEST Mark.

4. Opposer has continuously used its distinctive FEMGEST Mark since at least as early as February 15, 1997, which is approximately 9 years before the Applicant filed its intent to use application for the proposed FEMTEC Mark.

5. Opposer has been actively using the FEMGEST Mark. Through such extensive and continuous use, Opposer has acquired significant and valuable interest in the FEMGEST Mark and the goods and services offered thereunder. These interests will be injured by Applicant's use of the FEMTEC Mark, which is confusingly, substantially similar in appearance, sound, connotation, and commercial impression to Opposer's valuable FEMGEST Mark.

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

7. As a result of these expenditures, combined with substantial sales of quality goods under the FEMGEST Mark, the relevant consuming public has come to recognize the FEMGEST Mark as favorably distinguishing Opposer's goods and services from those of others.

8. Opposer has clear priority with respect to the use and registration of the FEMGEST Mark, or any mark confusingly similar thereto, in connection with medicated topical transdermal creams for application to irritated or itchy skin, and other similar goods and services.

9. The dominant portion of Applicant's FEMTEC Mark is confusingly similar

in appearance, sound, spelling, connotation and commercial impression to the dominant portion of Opposer's FEMGEST Mark.

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

11. Applicant's goods and services that are or may be sold under its FEMTEC Mark are or will be offered through the same or similar channels of trade and to the same or similar class of consumers as Opposer's goods and services.

12. Applicant's use and registration of the FEMTEC Mark will cause Opposer injury because such use is likely to cause confusion or mistake, or both, by wrongly leading consumers to believe that Opposer provides, or somehow is associated with Applicant's goods, products and services.

13. These consumers, upon purchasing, using or otherwise receiving Applicant's goods, products and services bearing the FEMTEC Mark are likely to be confused and deceived, and are likely to believe in the existence of some association between the Applicant or Applicant's goods and services and Opposer, all to the injury of Opposer's FEMGEST Mark.

14. Applicant's use and registration of the FEMTEC Mark will dilute the distinctive quality of and diminish or detract from the prior rights firmly established by Opposer in and to the FEMGEST Mark.

15. Please charge any additional fees to Deposit Account No. 501,844 and direct all correspondence in connection with this opposition to the undersigned.

WHEREFORE, refusal of the registration applied for by Application Serial No.

76/663,712 is respectfully submitted to be in order and is hereby requested.

Dated: April 4, 2007
Garden City, New York

Respectfully submitted,

Vitamin World, Inc.

By: _____

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Attorneys for Opposer
Vitamin World, Inc.



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TESS was last updated on Wed Mar 28 04:23:30 EDT 2007

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Typed Drawing

Word Mark	FEMGEST
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: MEDICATED TOPICAL TRANSDERMAL CREAMS FOR APPLICATION TO IRRITATED OR ITCHY SKIN. FIRST USE: 19970215. FIRST USE IN COMMERCE: 19970215
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75869994
Filing Date	December 13, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 2, 2001
Registration Number	2438301
Registration Date	March 27, 2001
Owner	(REGISTRANT) BIO-NUTRITIONAL FORMULAS, INC. CORPORATION NEW YORK 106 East Jericho Turnpike Mineola NEW YORK 11501 (LAST LISTED OWNER) VITAMIN WORLD, INC. CORPORATION DELAWARE 90 ORVILLE DRIVE BOHEMIA NEW YORK 11716
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Lee Grosskreuz Hechtel
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).

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