

ESTTA Tracking number: **ESTTA160126**

Filing date: **08/31/2007**

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	The Dannon Company, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	100 Hillside Avenue White Plains, New York, 10603, NY 10603 UNITED STATES		

Attorney information	Perla M. Kuhn Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004 UNITED STATES reed@hugheshubbard.com Phone:212-837-6000		
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Applicant Information

Application No	77106295	Publication date	08/14/2007
Opposition Filing Date	08/31/2007	Opposition Period Ends	09/13/2007
Applicant	NutritionOptions LLC 130 Weatherly Trail Guilford, CT 06437 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Beverages, namely, vitamin and nutritionally fortified beverages
Class 029. All goods and services in the class are opposed, namely: Snacks, namely, fruit based, vegetable based and protein based snacks; and beverages, namely, dairy based and yogurt based beverages; fruit based food beverages; vegetable based food beverages
Class 030. All goods and services in the class are opposed, namely: Lunch and snack kits containing natural and organic food products, namely, granola, fresh fruit, fruit and grain bars, processed cereal, processed grain, wheat and granola based snacks

Grounds for Opposition

Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof	Trademark Act section 2(b)
Priority and likelihood of confusion	Trademark Act section 2(d)

Dilution	Trademark Act section 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2523196	Application Date	07/13/1999
Registration Date	12/25/2001	Foreign Priority Date	NONE
Word Mark	DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 drinks made with yogurt		

U.S. Registration No.	2410492	Application Date	10/28/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 yogurt-based beverages		

U.S. Registration No.	2410493	Application Date	10/28/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 yogurt-based beverages		

U.S. Registration No.	2410494	Application Date	10/28/1999
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/08/15 First Use In Commerce: 1999/08/15 yogurt-based beverages		

U.S. Registration No.	2898247	Application Date	04/01/2003
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Registration Date	10/26/2004	Foreign Priority Date	NONE
Word Mark	DANIMALS KIDS RULE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2004/01/01 First Use In Commerce: 2004/01/01 Yogurt and yogurt Based beverages		

U.S. Registration No.	2924328	Application Date	06/10/2003
Registration Date	02/01/2005	Foreign Priority Date	NONE
Word Mark	DANIMALS XL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2004/01/31 First Use In Commerce: 2004/01/31 Yogurt, yogurt based beverages		

U.S. Application No.	78863497	Application Date	04/18/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/03/26 First Use In Commerce: 2006/04/01 Yogurt, yogurt-based beverages; dairy-based snack foods, excluding ice cream, ice milk, and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt Class 032. First use: First Use: 2006/03/26 First Use In Commerce: 2006/04/01 Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks		

U.S. Application No.	77002034	Application Date	09/19/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS XTREME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages; dairy products excluding ice cream, ice milk and frozen yogurt Class 032. First use: Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft		

	drinks
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U.S. Application No.	78859946	Application Date	04/12/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS DEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: Yogurt, yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt</p> <p>Class 032. First use: Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks</p>		

U.S. Application No.	78859973	Application Date	04/12/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS WIGGLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: Yogurt, yogurt-based beverages; dairy-based snack foods, excluding ice cream, ice milk, and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt</p> <p>Class 032. First use: Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks</p>		

U.S. Application No.	78859979	Application Date	04/12/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS WIGGLERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: Yogurt, yogurt-based beverages; dairy-based snack foods, excluding ice cream, ice milk, and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt</p> <p>Class 032. First use: Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks</p>		

U.S. Application	78859951	Application Date	04/12/2006
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DANIMALS DEN THE PLACE FOR GAMES & FUN		
Design Mark			
Description of Mark	The mark consists of a purple oval with yellow lettering throughout the oval. There is a green alligator on the top left of the oval with black sunglasses, white teeth, red tongue, purple shirt, and green eyes with a black center and a white outline. To the right of the alligator is a purple cat with a blue shirt with white stripes. The cat has a black nose, white teeth, black whiskers, white eyes with purple pupils and a black center, a purple hat with a yellow D in the center and a light blue strip going across the hat. There is a brown monkey to the right of the cat with a red tie, light brown abdomen and face, red tongue, white teeth, blue goggles with a black strap, and a black armband. The monkey is holding a brown stick. There is a white bear to the right of the monkey with a light blue jacket, black eyes, white tongue, and black nose.		
Goods/Services	Class 029. First use: First Use: 2006/04/30 First Use In Commerce: 2006/04/30 Yogurt, yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt Class 032. First use: First Use: 2006/04/30 First Use In Commerce: 2006/04/30 Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks		

U.S. Application No.	78782624	Application Date	12/29/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POWER UP WITH DANIMALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: Yogurt, yogurt-based beverages Class 032. First use: Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks		

Attachments	75836342#TMSN.gif (1 page)(bytes) 75836343#TMSN.gif (1 page)(bytes) 75836345#TMSN.gif (1 page)(bytes) 78863497#TMSN.jpeg (1 page)(bytes) 77002034#TMSN.jpeg (1 page)(bytes) 78859946#TMSN.jpeg (1 page)(bytes) 78859973#TMSN.jpeg (1 page)(bytes) 78859979#TMSN.jpeg (1 page)(bytes) 78859951#TMSN.jpeg (1 page)(bytes) 78782624#TMSN.jpeg (1 page)(bytes) Notice Of Opposition - ORGANIMALS.pdf (9 pages)(19527 bytes)
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Signature	/Perla M. Kuhn/
Name	Perla M. Kuhn

Date	08/31/2007
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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The Dannon Company, Inc. : Opposition No.: _____
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Opposer, : Application Serial No. 77/106,295
: :
-v- : Filing Date: February 13, 2007
: :
NutritionOptions LLC, : Published: August 14, 2007
: :
Applicant. : Trademark: ORGANIMALS
: :
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NOTICE OF OPPOSITION

Opposer, The Dannon Company, Inc. (“Dannon”) a corporation organized and existing under the laws of Delaware, and having its principal place of business at 100 Hillside Avenue, White Plains, New York, 10603, believes that it will be damaged by the registration of the mark ORGANIMALS in Classes 5, 29 and 30, currently pending registration in the name of NutritionOptions LLC (“NutritionOptions” or “Applicant”), published in the *Official Gazette* on August 14, 2007.

As grounds for this Opposition, Dannon relies upon the rights developed by it and its related companies (hereinafter “Dannon” or “Opposer”) and alleges on knowledge as to itself and otherwise upon information and belief, as follows:

Dannon's Business And DANIMALS Marks

1. Dannon is engaged, and for many years has been engaged, in the sale in the United States of dairy products, snack products, foods and beverages, including yogurt and other products, fruit-based snacks, bakery products, dairy, yogurt and fruit-based drinks and nutritional supplements.

2. Dannon has marketed several successful brands of snack foods, dairy products and beverages, one being snacks foods and beverages marketed under the trademark DANIMALS.

3. For many years, and long prior to Applicant's filing of the application herein opposed, Dannon has used the mark DANIMALS, and variations thereof, in interstate commerce throughout the United States in connection with the sale of snack foods, dairy products and beverages.

4. Dannon has obtained the following trademark registrations in the United States Patent and Trademark Office (the "PTO") for the mark DANIMALS, and variations thereof (hereinafter, the "DANIMALS Registrations"):

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods</u>
DANIMALS	2,523,196	December 25, 2001	"Drinks made with yogurt" in class 29
DANIMALS & Design	2,410,492	December 5, 2000	"Yogurt-based beverages" in class 29
DANIMALS & Design	2,410,493	December 5, 2000	"Yogurt-based beverages in class 29
DANIMALS & Design	2,410,494	December 5, 2000	"Yogurt-based beverages" in class 29
DANIMALS KIDS RULE	2,898,247	October 26, 2004	"Yogurt and yogurt based beverages" in class 29
DANIMALS XL	2,924,328	February 1, 2005	"Yogurt, yogurt based beverages" in class 29

5. The DANIMALS Registrations are valid and subsisting, unrevoked and uncanceled, and are *prima facie* evidence of the validity of Dannon's exclusive right to use the marks depicted in those registrations in commerce in connection with the goods described in the registrations, without condition or limitation, and constitute constructive notice of Dannon's ownership of the marks in the DANIMALS Registrations (hereinafter, the "DANIMALS Marks") for the goods described in the registrations, as provided for by §§ 7(b), 22, and 33(a) of the Lanham Act.

6. Dannon has also filed the following applications with the PTO to register the mark DANIMALS, and variations thereon (hereinafter, the "DANIMALS Applications"):

<u>Mark</u>	<u>Application Ser. No.</u>	<u>Application Date</u>	<u>Goods</u>
DANIMALS (Stylized)	78/863,497	April 18, 2006	"Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages; dairy products excluding ice cream, ice milk and frozen yogurt" in Class 29; and "Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks" in Class 32
DANIMALS XTREME	77/002,034	September 19, 2006	"Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages; dairy products excluding ice cream, ice milk and frozen yogurt" in Class 29; and "Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks" in Class 32

<u>Mark</u>	<u>Application Ser. No.</u>	<u>Application Date</u>	<u>Goods</u>
DANIMALS DEN	78/859,946	April 12, 2006	“Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages; dairy products excluding ice cream, ice milk and frozen yogurt” in Class 29; and “Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks” in Class 32
DANIMALS WIGGLERS	78/859,973	December 5, 2006	“Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy-based beverages; dairy products excluding ice cream, ice milk and frozen yogurt” in Class 29; and “Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks” in Class 32
DANIMALS WIGGLERS (Stylized)	78/859,979	April 12, 2006	“Yogurt, yogurt-based beverages; dairy-based snack foods, excluding ice cream, ice milk, and frozen yogurt; dairy-based beverages, dairy products excluding ice cream, ice milk and frozen yogurt” in Class 29 and “Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks” in Class 32

<u>Mark</u>	<u>Application Ser. No.</u>	<u>Application Date</u>	<u>Goods</u>
DANIMALS DEN THE PLACE FOR GAMES & FUN	78/859,951	April 12, 2006	“Yogurt and yogurt-based beverages; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; dairy- based beverages; dairy products excluding ice cream, ice milk and frozen yogurt” in Class 29; and “Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks” in Class 32
POWER UP WITH DANIMALS	78/782,624	December 29, 2005	“Yogurt, yogurt-based beverages” in Class 29 and “Fruit juices and fruit drinks; fruit-based beverages with yogurt; smoothies; soft drinks” in Class 32.

Dannon has expended substantial amounts of time and effort in advertising and promoting its goods under the DANIMALS Marks. As a result of such advertising and promotional activities, the DANIMALS Marks have become famous and the relevant public has come to associate and identify the DANIMALS Marks with Dannon, and Dannon derives substantial goodwill from such identification by consumers.

Applicant’s ORGANIMALS Mark

7. On February 13, 2007, NutritionOptions filed an intent-to-use application to register the mark ORGANIMALS, Serial No. 77/106,295 on the Principal Register of the PTO for “beverages, namely, vitamin and nutritionally fortified beverages” in Class 5, “snacks, namely, fruit based, vegetable based and protein based snacks; and beverages, namely, dairy based and yogurt based beverages; fruit based food beverages; vegetable based food beverages” in Class 29 and “lunch and snack kits containing natural and organic food products, namely,

granola, fresh fruit, fruit and grain bars, processed cereal, processed grain, wheat and granola based snacks” Class 30.

Count I: Likelihood of Confusion

8. Dannon hereby incorporates by reference the allegations of Paragraphs 1 through 8 hereof as if fully set forth herein.

9. Dannon has the exclusive right to own and use the DANIMALS Marks in the United States, and its rights in those marks are prior and superior to any rights which Applicant may claim in, and to those marks, and the mark ORGANIMALS, in any form or style.

10. The mark ORGANIMALS depicted in the application herein opposed is confusing similar in sight, sound, connotation and commercial impression to Opposer’s DANIMALS Marks and there is a direct overlap between the goods covered by the respective marks, such that the goods are related.

11. Accordingly, Applicant’s mark is likely to cause confusion, mistake or to deceive under § 2(d) of the Lanham Act.

12. If Applicant is permitted to use and register the ORGANIMALS mark, there likely will be confusion in the relevant markets resulting in damage and injury to Opposer by reason of the similarity between Opposer’s DANIMALS Marks and Applicant’s ORGANIMALS mark. Persons familiar with Opposer’s DANIMALS Marks would be likely to avail themselves of Applicant’s goods, believing them to be offered by Opposer. Likewise, persons exposed to Applicant’s ORGANIMALS mark who subsequently become acquainted with Opposer’s DANIMALS Marks are likely to conclude that the goods offered by Opposer, are in some manner related to the goods that Applicant offers under its ORGANIMALS mark. Any such confusion inevitably would result in damage and injury to Opposer.

13. Opposer will be damaged by registration of the mark shown in the application herein opposed because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark, and will give color of rights to Applicant in violation of Opposer's prior and superior rights in the DANIMALS Marks.

Count II: Likelihood of Dilution

14. Dannon hereby incorporates by reference the allegations of Paragraphs 1 through 14 hereof as if fully set forth herein.

15. Pursuant to Section 43(c) of the Lanham Act, Opposer's DANIMALS Marks are famous. Opposer's DANIMALS Marks became famous prior to the date that Applicant can first lay claim to any rights in the ORGANIMALS mark.

16. The registration and use of Applicant's ORGANIMALS mark will likely dilute the distinctive quality of Opposer's famous DANIMALS marks.

17. Opposer will be damaged by registration of the mark shown in the application opposed herein because such registration will support and assist Applicant in the diluting use of Applicant's ORGANIMALS marks, and will give color or rights to Applicant in violation of Opposer's prior and superior statutory and common law rights in the DANIMALS Marks.

WHEREFORE, Dannon prays that this Opposition be sustained and that the application for registration of the mark ORGANIMALS opposed herein be in all respects denied.

Dated: New York, New York
August 30, 2007

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By: /Perla M. Kuhn/

Perla M. Kuhn

Natasha N. Reed

Attorneys for Opposer

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New York, New York 10004
(212) 837-6000

CERTIFICATE OF TRANSMISSION

I hereby certify that an original copy of the foregoing Notice Of Opposition was transmitted online on August 31, 2007 through the website of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Dated: New York, New York
August 31, 2007

By /Natasha N. Reed/
Natasha N. Reed