

ESTTA Tracking number: **ESTTA198556**

Filing date: **03/14/2008**

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	Guthy-Renker Corporation
Granted to Date of previous extension	03/19/2008
Address	41-550 Eclectic Street, Suite 200 Palm Desert, CA 92260 UNITED STATES
Attorney information	Daniel M. Cislo, Esq. Cislo & Thomas LLP 1333 2nd Street, Suite 500 Santa Monica, CA 90401-4110 UNITED STATES dan@cislo.com Phone:310-451-0647

**Applicant Information**

Application No	77200216	Publication date	11/20/2007
Opposition Filing Date	03/14/2008	Opposition Period Ends	03/19/2008
Applicant	Boyd, Michael Suite 121 1100 Smithville Highway McMinnville, TN 37110 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Powdered nutritional supplement drink mix; dietary and nutritional supplements
---

**Applicant Information**

Application No	77199725	Publication date	11/20/2007
Opposition Filing Date	03/14/2008	Opposition Period Ends	
Applicant	Boyd, Michael Suite 121 1100 Smithville Highway McMinnville, TX 37110 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Dietary supplemental drinks; powdered
--

nutritional supplement drink mix
----------------------------------

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VITAPOWDER		
Goods/Services	Powdered nutritional supplement drink mix; dietary and nutritional supplements		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	EASY POUR VITAPOWER		
Goods/Services	Dietary supplemental drinks; powdered nutritional supplement drink mix		

Attachments	Consolidated Notice of Opposition as filed.PDF ( 6 pages )(342562 bytes )
-------------	---

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel M. Cislo/
Name	Daniel M. Cislo, Esq.
Date	03/14/2008

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

---

**IN THE MATTER OF APPLICATION SERIAL NOS.  
77/200,216 AND 77/199,725  
BOTH PUBLISHED IN THE OFFICIAL GAZETTE ON  
NOVEMBER 20, 2007**

---

GUTHY-RENKER CORPORATION, a Delaware corporation,	)	OPPOSITION NO. _____
	)	
OPPOSER,	)	<u>CONSOLIDATED</u>
vs.	)	NOTICE OF OPPOSITION
	)	
MICHAEL BOYD., an Individual,	)	
	)	
APPLICANT.	)	
	)	
	)	
	)	

---

Opposer, GUTHY-RENKER CORPORATION, a Delaware corporation, having offices at 41-550 Eclectic Street, Suite 200, Palm Desert, California 92260 (“Guthy-Renker”), believes that it will be damaged by registration of the marks shown in Application Serial Nos. 77/200,216 and 77/199,725 filed by Applicant Michael Boyd, an individual, having an address of Suite 121, 1100 Smithville Highway, McMinnville, Tennessee<sup>1</sup> 37110, and hereby opposes the same and requests that the registration to the Application be refused.

The grounds for opposition are as follows:

---

<sup>1</sup> Application Serial No. 77/199,725 lists the state as “Texas”, although this appears to be in error.

1. Applicant seeks to register marks which consists of the terms VITAPOWDER and EASY POUR VITAPOWDER (“Applicant’s Marks”), for use in connection with, respectively, “powdered nutritional supplement drink mix; dietary and nutritional supplements” and “dietary supplemental drinks; powdered nutritional supplement drink mix” in Class 005 (hereinafter “Applicant’s Goods”). The applications are both intent-to-use applications under 15 U.S.C. §1051(1)(b).

2. Opposer has obtained the necessary extensions of time in which to file this Notice of Opposition to both of the above-referenced applications.

3. Since at least as early as January 29, 1994, Opposer, its predecessors, or its related companies have continuously used the V GRN VITAPOWDER (and design) mark (“Opposer’s Mark”) in interstate commerce as a trademark for goods, including, vitamin and mineral supplements (“Opposer’s Goods”). Opposer has also used the word mark GRN VITAPOWDER in commerce as a trademark for its Goods collectively with the V GRN VITAPOWDER (and design mark, “Opposer’s Marks”). Opposer’s Marks also continuously appeared in substantial advertising and promotion of Opposer’s products such that the Marks are closely identified with Opposer’s Goods and have gained a very valuable public recognition. Opposer has established an outstanding reputation as to the quality of its products sold under Opposer’s Mark.

4. Guthy-Renker has continuously used Opposer’s Marks in interstate commerce since long prior to any date upon which Applicant can rely. By virtue of its sales of high-quality products bearing the Marks in interstate commerce, its expenditures of considerable

sums for promotional activities and the excellence of its products, Opposer has developed significant goodwill in its Marks and a valuable reputation.

5. Opposer's trademark rights for Marks have priority over Applicant's Marks, inasmuch as Opposer has continuously used its Marks since it commenced use of its marks, and Applicant's Application is listed as an intent-to-use application.

6. Applicant's Marks so resemble Opposer's Marks that have been and are currently used, as to be likely to cause confusion, or cause mistake, or to deceive, in violation of Section 2(d) of The Trademark Act, 15 U.S.C. §1052(d), when used on or in connection with Applicant's Goods.

7. Under the circumstances, registration of the marks that are the subjects of Application Serial Nos. 77/199,725 and 77/200,216 will injure Opposer by causing the trade and/or purchasing public to be confused, and/or deceived into believing that Applicant's Goods are those of Opposer, or are sponsored by Opposer, to Opposer's damage and will place a cloud over Opposer's title to its Marks, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d).

8. Opposer's Marks were well established and famous long before the filing date of Applicant's subject applications, and at the time that Applicant filed the subject applications. Registration by Applicant would diminish and dilute the distinctive quality of Opposer's rights in its famous Marks in violation of 15 U.S.C. §1125(c). Moreover, registration by Applicant would diminish the advertising value of Opposer's Marks, and such registration would, in the

event of any quality problems involving the goods offered by Applicant, tarnish the distinctiveness of Opposer's Marks.

9. Opposer's Marks are distinctive and famous such that the public would associate Opposer's Marks with Opposer when encountering Opposer's Marks apart from Opposer's Goods.

10. Applicant's Marks are the same as, or substantially the same as Opposer's Marks, including in visual appearance and in pronunciation.

11. Applicant's Marks are likely to and/or have diluted and lessened the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

12. Applicant's marks so resemble Opposer's continuously used, famous and well-known Marks as to be likely, when used in connection with the goods as set forth in Applicant's applications, to lessen the capacity of Opposer's Marks to identify and distinguish Opposer's Goods.

13. The subject Applications should be refused because Opposer's rights of continuing its present use of its Marks in commerce are, or would be, threatened by Applicant's registration of the VITAPOWDER and EASY POUR VITAPOWDER marks for Applicant's Goods, and because Opposer's business would be otherwise damaged by Applicant's registration of the VITAPOWDER and EASY POUR VITAPOWDER marks for Applicant's Goods.


WHEREFORE, the Opposer prays that Application Serial Nos. 77/199,725 and 77/200,216 be rejected, and that the marks sought for the goods therein to be specified in International Class 005 be denied and refused.

The required fee for two applications (one class of goods each), and any additional fees, may be charged to Opposer's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: March 14<sup>th</sup>, 2008

  
Daniel M. Cislo, Esq.  
Reg. No. 32,973

**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

on 3-14-08  
Daniel M. Cislo, Reg. No. 32,973 3-14-08  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Mr. Michael I. Kroll, Esq.  
171 Stillwell Lane  
Syosset, NY 11791-1913

Mr. Michael Boyd  
Suite 121 1100 Smithville Highway  
McMinnville, Tennessee 37110

Dated: 3-14-08

By: [Signature]  
Daniel M. Cislo, Reg. No. 32,973

CISLO & THOMAS LLP  
1333 2nd Street, Suite 500  
Santa Monica, California 90401  
Tel: (310) 451-0647  
Fax: (310) 394-4477  
www.cislo.com