

ESTTA Tracking number: **ESTTA212569**
 Filing date: **05/20/2008**

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	Cargill, Incorporated
Granted to Date of previous extension	05/21/2008
Address	15407 McGinty Road West Wayzata, MN 55391 UNITED STATES

Attorney information	Allen Hinderaker Merchant & Gould, P.C. Suite 3200 80 South Eighth St. Minneapolis, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300
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Applicant Information

Application No	77253525	Publication date	01/22/2008
Opposition Filing Date	05/20/2008	Opposition Period Ends	05/21/2008
Applicant	Del Monte Corporation One Market Street San Francisco, CA 94105 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Pet food

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1066887	Application Date	11/03/1976
Registration Date	05/31/1977	Foreign Priority Date	NONE
Word Mark	VITALITY		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 031. First use: First Use: 1919/03/01 First Use In Commerce: 1919/03/01 HORSE FEED AND DOG FOOD
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U.S. Application No.	77415766	Application Date	03/07/2008
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	VITALITY
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 031. First use: First Use: 1919/03/01 First Use In Commerce: 1919/03/01 Horse feed
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Related Proceedings	None
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Attachments	77415766#TMSN.jpeg (1 page)(bytes) 2008 05 20 Notice of Opposition.pdf (13 pages)(425757 bytes)
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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	/William Schultz/
Name	William Schultz
Date	05/20/2008

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

Cargill, Incorporated,)	
)	Opposition No. _____
Opposer,)	
)	Mark: VITALITY BITES
v.)	
)	Application Ser. No. 77-253,525
Del Monte Corporation,)	
)	Filed: August 13, 2007
Applicant.)	
)	Published: January 22, 2008
_____)	

NOTICE OF OPPOSITION

Cargill, Incorporated, a Delaware Corporation, having a principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391, believes it will be damaged by registration of VITALITY BITES as a trademark for “pet food,” Application Ser. No. 77-253,525, by Del Monte Corporation (hereinafter referred to as “Applicant”), and hereby opposes the same upon the following grounds.

1. Cargill is the owner of the registered trademark VITALITY. Since at least as early as 1919, and long prior to Applicant's intent-to-use filing date of August 13, 2007, Cargill adopted and began using the mark VITALITY for use on or in connection with goods relating to animals and the feeding thereof, which are and have been continuously used and marketed in interstate commerce by Cargill.

2. On November 3, 1976, Cargill applied for the trademark VITALITY for use in connection with “horse feed and dog food.” On May 31, 1977, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No.

1,066,887 for the mark VITALITY. Registration No. 1,066,887 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the VITALITY mark in commerce in connection with those goods. A copy of the TARR report for the registration is attached as Exhibit A.

3. On March 7, 2008, Cargill applied for the mark VITALITY for use in connection with "horse feed." The United States Patent & Trademark Office assigned that application number 77-415,766. That application remains pending. A copy of the TARR report for the application is attached as Exhibit B.

4. Cargill has expended substantial amounts of money in marketing, advertising and promoting its VITALITY mark on or in connection with numerous goods and services relating to animals and the feeding thereof in the United States.

5. Cargill has enjoyed substantial sales of goods and services in the United States in connection with the use of the VITALITY mark.

6. By reason of the extensive marketing, advertising and promotion of goods and services in connection with the VITALITY mark and the high quality of those goods and services, these marks have extremely valuable goodwill that inures to the benefit of Cargill.

7. Applicant is an Delaware corporation with a principal place of business at One Market Street, San Francisco, CA 94105.

8. Applicant is seeking to obtain registration on the Principal Register of the mark VITALITY BITES, Application Serial No. 77-253,525, for use on or in connection with "pet food."

9. There is no issue of priority concerning Application Ser. No. 77-253,525 because Cargill has use and registration of its VITALITY mark prior to August 13, 2007, Applicant's filing date of its intent-to-use application.

10. Cargill enjoys substantial and exclusive goodwill and good reputation in connection with its VITALITY trademark. This goodwill and reputation will be harmed by the use and registration of the mark VITALITY BITES sought to be registered by Applicant.

11. Applicant's intended adoption and use of its VITALITY BITES mark has been with actual or constructive knowledge of Cargill's prior use of, applications for, and registrations of its VITALITY marks.

12. Applicant's intended adoption and use of the VITALITY BITES trademark has been without Cargill's consent or permission.

13. The VITALITY BITES trademark for which Applicant seeks registration confusingly similar in appearance, sound and connotation to Cargill's VITALITY mark. The "BITES" portion of the mark was disclaimed.

14. Applicant's VITALITY BITES mark so resembles Cargill's VITALITY trademark as to be likely, when applied to Applicant's goods, to cause confusion, mistake, or deception as to the source of origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Cargill.

15. The goods for which Applicant seeks registration of the VITALITY BITES trademark, namely, "pet food," are sufficiently related to the goods and services marketed under Cargill's VITALITY mark to likely cause confusion among purchasers and potential purchasers of Applicant's goods.

16. The goods for which the Applicant seeks registration of the VITALITY BITES trademark are likely to be sold to or used by the same customers to whom Cargill sells its goods and services under the VITALITY mark. The goods of Cargill and Applicant will travel in the same channels of trade.

17. Applicant's VITALITY BITES mark is confusingly similar to Cargill's VITALITY mark and use thereof by the Applicant on the goods specified in Application No. 77-253,525 is likely to cause confusion, mistake, or deception that Applicant's goods are those of Cargill or are otherwise endorsed, sponsored, or approved by Cargill, whereby Cargill will be damaged by registration of Applicant's VITALITY BITES mark on the Principal Register of the United States Patent and Trademark Office.

18. Granting a federal trademark registration to Applicant for its claimed VITALITY BITES mark as shown in Application Serial No. 77-253,525 would be contrary to 15 U.S.C. § 1052 (d) and would violate or diminish the prior and superior rights of Cargill in its VITALITY trademark, causing irreparable damage and injury to Cargill.

PRAYER FOR RELIEF

WHEREFORE, Cargill asks that its opposition to Application No. 77-253,525 be sustained and that the registration of the term VITALITY BITES set forth therein be refused.

Please direct all correspondence to the attention of Allen W. Hinderaker:

Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
612-332-5300

Cargill hereby appoints Allen W. Hinderaker; Christopher Schulte; William D. Schultz; Heather J. Kliebenstein; Scott W. Johnston, Reg. No. 39,721; and other attorneys of the Merchant & Gould P.C. law firm as attorneys with the full power to represent Cargill, to receive all correspondence related thereto and to represent it in all proceedings affecting the potential opposition of the mark.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Cargill's counsel noted above.

Respectfully submitted,

Dated: May 20, 2008

CARGILL, INCORPORATED

By its attorneys,




Allen W. Hinderaker
William D. Schultz
Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon the following correspondent of record for Applicant by Certified First Class Mail, postage pre-paid, this 20th day of May 2008:

Rosemary A. Petitta
Del Monte Corporation
375 N. Shore Dr.
Pittsburgh, PA 15212-5836



William Schultz

5/20/08

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-05-20 11:31:19 ET

Serial Number: 73105242 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1066887

Mark (words only): VITALITY

Standard Character claim: No

Current Status: [This registration has been renewed](#).

Date of Status: 2007-06-20

Filing Date: 1976-11-03

Transformed into a National Application: No

Registration Date: 1977-05-31

Register: [Principal](#)

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-11-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

Exhibit A

1. CARGILL, INCORPORATED

Address:

CARGILL, INCORPORATED
15407 MCGINTY ROAD WEST
WAYZATA, MN 55391
United States

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

International Class: [031](#)

Class Status: [Active](#)

[HORSE FEED AND DOG FOOD](#)

Basis: [1\(a\)](#)

First Use Date: [1919-03-01](#)

First Use in Commerce Date: [1919-03-01](#)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2007-11-16 - Case File In TICRS](#)

[2007-06-20 - First renewal 10 year](#)

2007-06-20 - Section 8 (10-year) accepted/ Section 9 granted

2007-06-14 - Assigned To Paralegal

2007-05-22 - Combined Section 8 (10-year)/Section 9 filed

2007-05-22 - TEAS Section 8 & 9 Received

1997-07-08 - First renewal 10 year

1997-05-21 - Section 9 filed/check record for Section 8

1982-08-30 - Section 8 (6-year) accepted & Section 15 acknowledged

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Ronald E. Hunter

Correspondent

Ronald E. Hunter

Cargill, Incorporated

Law Department / MS24

PO Box 5624

Minneapolis MN 55440

Phone Number: 952-742-6334

Fax Number: 952-404-6367

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-05-20 11:32:25 ET

Serial Number: 77415766 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

VITALITY

(words only): [VITALITY](#)

Standard Character claim: [Yes](#)

Current Status: [Examiner's Amendment/Priority Action Mailed](#)

Date of Status: [2008-05-09](#)

Filing Date: [2008-03-07](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [No](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Exhibit B

Law Office Assigned: [LAW OFFICE 117](#)

Attorney Assigned:
[TANNER MICHAEL R](#)

Current Location: [L60 -TMEG Law Office 106](#)

Date In Location: [2008-05-09](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Cargill, Incorporated](#)

Address:

[Cargill, Incorporated](#)
[15407 McGinty Road West](#)
[Wayzata, MN 55391](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

Phone Number: [952-742-6334](#)

Fax Number: [952-404-6367](#)

GOODS AND/OR SERVICES

International Class: [031](#)

Class Status: [Partially Paid](#)

[Horse feed](#)

Basis: [1\(a\)](#)

First Use Date: [1919-03-01](#)

First Use in Commerce Date: [1919-03-01](#)

ADDITIONAL INFORMATION

Prior Registration Number(s):

1066887

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2008-05-09 - Combined Examiner's Amendment/Priority Action Entered](#)

[2008-05-09 - Assigned To LIE](#)

[2008-05-09 - Notification Of Examiner's Amendment/Priority Action E-Mailed](#)

[2008-05-09 - Examiner's Amendment/Priority Action E-Mailed](#)

[2008-05-09 - Examiners Amendment And/Or Priority Action - Completed](#)

[2008-05-09 - Removed From TEAS Plus](#)

[2008-05-08 - Assigned To Examiner](#)

[2008-03-12 - New Application Entered In Tram](#)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

[Ronald E. Hunter](#)

Correspondent

[RONALD E. HUNTER](#)

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