

ESTTA Tracking number: **ESTTA242603**

Filing date: **10/14/2008**

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	Dr.FordAlbrittonIV
Granted to Date of previous extension	10/12/2008
Address	3112 Greenbrier Dallas, TX 75225 UNITED STATES

Attorney information	Robert D. McCutcheon Munck Carter, P.C. P.O. Drawer 800889 Dallas, TX 75380 UNITED STATES rmccutcheon@munckcarter.com, kwoods@munckcarter.com, trademarks@munckcarter.com Phone:972-628-3600
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Applicant Information

Application No	78892606	Publication date	04/15/2008
Opposition Filing Date	10/14/2008	Opposition Period Ends	10/12/2008
Applicant	Jarrow Formulas, Inc. 1824 South Robertson Blvd. Los Angeles, CA 900354317 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 1994/09/00 First Use In Commerce: 1994/09/00
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	The mark is a mutilation of applicant's registered marks and is a phantom registration, which is prohibited by 15 USC 1051.

Related Proceedings	91186397
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Attachments	Notice of Opposition SUSTAIN.pdf (8 pages)(844794 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	/dyanhouse/
Name	Dyan M. House
Date	10/14/2008

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

In the Matter of Application Serial No. 78/892,606
Published in the *Official Gazette* April 15, 2008

Ford Albritton, IV,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Jarrow Formulas, Inc.)	
)	
Applicant.)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Ford Albritton, IV, a United States citizen and a resident of the state of Texas, having a principal address at 3112 Greenbrier, Dallas, Texas 75225 (“Opposer”), believes he will be damaged by the registration of the mark SUSTAIN (the “Mark”) that is the subject of U.S. Trademark Application No. 78/892,606 (the “Application”) and hereby opposes registration of same.

As grounds for opposition, it is alleged that:

1. Applicant is the owner and registrant of the marks JOINT SUSTAIN (Reg. No. 2,735,038), ALPHA LIPOIC SUSTAIN (Reg. No. 3,087,209), MELATONIN SUSTAIN (Reg. No. 3,301,658), and NAC SUSTAIN (Reg. No. 3,301,674) (collectively, “Applicant’s Registered Marks”).

2. Applicant’s specimen in the instant application depicts use of the registered mark NAC SUSTAIN. See Exhibit A attached hereto.

3. Applicant’s Mark is a mutilation of Applicant’s Registered Marks and therefore should be refused registration under 15 U.S.C. §1051. See Exhibit B for examples of Applicant’s use of the term SUSTAIN after the terms NAC, ALPHA LIPOIC, and MELATONIN, which combination of terms, respectively, comprise Applicant’s Registered Marks.

4. The registration for which Applicant is seeking is in effect a phantom registration for the mark xxxx SUSTAIN and therefore should be refused registration under 15 U.S.C. §1051.

5. Applicant has submitted an application in which multiple marks are represented and therefore should be refused registration under 15 U.S.C. §1051, 15 U.S.C. §1127 and 37 C.F.R. §2.52.

6. Applicant’s mark is merely descriptive of a characteristic, function, feature, and purpose of Applicant’s goods and therefore should be refused registration under 15 U.S.C. §1052(e)(1).

7. Registration of Applicant’s Mark would give Applicant a prima facie right to exclusive use of the term SUSTAIN in connection with dietary and nutritional supplements thereby precluding Opposer’s use of the mark SUSTAIN BIOLOGICS in connection with dietary and nutritional supplements. Further, registration of Applicant’s Mark could potentially bar

Opposer's registration of the mark SUSTAIN BIOLOGICS, the subject of U.S. Trademark Application No. 77/141,160.


8. This is a timely opposition, as extensions of time to file opposition have been obtained to date.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark SUSTAIN be denied in all respects.

Dated: October 14, 2008

Respectfully submitted,

MUNCK CARTER, PC

By: 

Robert D. McCutcheon
Texas State Bar No. 00789480
Dyan M. House
Texas State Bar No. 24036923


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ATTORNEYS FOR FORD ALBRITTON,
IV

EXHIBIT A

Products

Page 1 of 2



ESTABLISHED 1974

May 25, 2006


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Product Categories

[jarrow.com](#)

- [Amino Acids](#)
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- [Athletic Formulas](#)
- [Basic Vitamins](#)
- [Bone Formulations](#)
- [Brain, Eye, Gum & Dental](#)
- [Co-Q10 Products](#)
- [Digesting Enzymes](#)
- [Garlic & Fibers](#)
- [Germanium](#)
- [Green, Fruit, Super Foods](#)
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N-A-C SUSTAIN™
Antioxidant & Glutathione Precursor*

Dosage: 600 mg
Size: 100 Tablets
Category: Amino Acids
Product Number: 02001
Product Code: AUS

[Print product info](#)

Usage: Take 1 to 4 SUSTAIN™ tablets per day, preferably on an empty stomach with fruit juice, or as directed by your qualified health consultant.

N-A-C Sustain™ is a patented, extended release form of N-ACETYL-L-CYSTEINE(NAC), an antioxidant amino acid and a precursor to the critical antioxidant glutathione. Glutathione exerts a variety of protective effects, including detoxification and intracellular defense against oxidative stress. Substances known to reduce glutathione status are acetaminophen and alcohol.*

NAC has a biological half-life of 1.5 hours in the bloodstream. Jarrow Formulas N-A-C Sustain™ will release in the small intestine over a 4 hour period in order to maintain blood levels over a longer period of time. Protected by U.S. Patent 6,623,754.*

Keep out of the reach of children.

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.


Other Ingredients: Polyacrylate, calcium phosphate, cellulose, stearic acid, magnesium stearate and silicon dioxide. Contains NO common allergen. (U.S. Pharmaceutical Grade N-A-C.)


Supplement Facts		
Serving Size 1 Tablet		
	Amount Per Tablet	% Daily Value
N-Acetyl-L-Cysteine	600 mg	*


* Daily Value not established.


Click below for more in this category:


1 | 2 | 3 | 4


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Acetyl L-Carnitine
Dosage: 250 mg
Size: 60 Capsules
Product Number: 02602
[click here for more info](#)
- 


Acetyl L-Carnitine
Dosage: 250 mg
Size: 120 Capsules
Product Number: 15032
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- 


Acetyl L-Carnitine
Dosage: 500 mg
Size: 60 Capsules
Product Number: 15037
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- 


Acetyl L-Carnitine
Dosage: 1000 mg
Size: 100 Grams Powder
Product Number: 02010
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ALCA™ 500
Dosage: 500 mg
Size: 100 Capsules
Product Number: 02009
[click here for more info](#)
- 

ALCA™500 ALA 100
Dosage: n/a
Size: 100 Capsules
Product Number: 02013
[click here for more info](#)
- 

Amino Surge™
Dosage: 1036 mg
Size: 250 Tablets
Product Number: 15003
[click here for more info](#)
- 

Arginine + Ornithine
Dosage: 750 mg
Size: 100 Capsules
Product Number: 15041
[click here for more info](#)
- 

Arginine 1000
Dosage: 1000 mg
Size: 100 Easy-Solve® Tablets
Product Number: 15036
[click here for more info](#)
- 

BCAA
Dosage: n/a
Size: 120 Capsules
Product Number: 15053
[click here for more info](#)

<http://www.jarrow.com/product.php?prodid=323>

5/25/2006

EXHIBIT B

N-A-C SUSTAIN - Microsoft Internet Explorer provided by Davis-Hanck PC

http://www.jarrow.com/product/323/N_A_C_SUSTAIN

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N-A-C SUSTAIN

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Wholesale Orders
orders@jarrow.com
(916) 284-6936

N-A-C SUSTAIN®

Antioxidant & Glutathione Precursor



Product Data
Dosage: 600 mg
Size: 100 Tablets
Category: Minerals
Product Number: 117001
Product Code: 5117

Print product info

Supplement Facts		
Serving Size 1 Tablet		
	Amount Per Tablet	% DV
N-Acetyl-L-Cysteine	600 mg	
* Daily Value not established.		

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Suggested Usage
Take 1 to 4 tablets per day, preferably on an empty stomach with fruit juice, or as directed by your qualified health care consultant.

Other Ingredients
Polyacrylate, calcium phosphate, cellulose, stearic acid (vegetable source), magnesium stearate (vegetable source), silicon dioxide, modified cellulose and beet root powder (for color), U.S. Pharmaceutical Grade N-A-C

No wheat, no gluten, no soy, beans, no dairy, no egg, no fish/shellfish, no peanuts/tree nuts.

You May Also Be Interested In



What does N-A-C SUSTAIN® do?
NAC SUSTAIN® is in a bilayer Quick-Release / Sustained Release format of N-ACETYL-L-CYSTEINE (NAC), a powerful antioxidant amino acid and a precursor to the critical antioxidant glutathione.* Glutathione exerts a variety of protective effects, including detoxification and intracellular defense against oxidative stress.* Substances known to reduce glutathione status are acetaminophen and alcohol.*

The advanced bilayer technology combines 1/3 Quick-Release and 2/3 Sustained Release formats to both immediately raise and to maintain blood levels over a longer period of time.* NAC SUSTAIN® releases in the small intestine over a 4 hour period, compared to the 1.5 hour biological half-life of NAC in the bloodstream.* Protected by U.S. Patent 6,623,754.



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orders@jarrow.com
(310) 264-6936

Melatonin Sustain™

Melatonin, Magnesium, B-6



Product Data

Dosage: 60
Size: 60 Customer Release
Tablets
Category: Minerals
Product Number: 115011
Product Code: MSS

Print product info

Supplement Facts		
Serving Size 1 Tablet		
	Amount Per Tablet	% DV
Vitamin B ₆ (Pyridoxine HCl)	2 mg	100%
Magnesium (from magnesium oxide)	100 mg	25%
Melatonin	1 mg	

* Daily Value not established.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

What does Melatonin Sustain™ do?

Melatonin is a hormone secreted by the pineal gland that aids biorhythm regulation.* Biorhythm is disturbed by stress, crossing time zones and changing work shifts.* Melatonin production also declines with age.* Vitamin B₆ aids melatonin metabolism.*

Keep out of the reach of children.

Suggested Usage

Take 1 or 1/2 tablet 20-30 minutes prior to bedtime, or as directed by your qualified health care consultant.

Warning: DO not drive or operate machinery, immediately following use of this product. **DO NOT** use if you are pregnant, lactating or under the age of 18. Anyone who has been diagnosed with MS, lymphoma, leukemia, diabetes, epilepsy, autoimmune disease, or uses MAO inhibitors (such as iproniazid) should not take melatonin. **DO NOT** use if asthmatic; melatonin may provoke an asthma attack in persons that already have asthma.

Other Ingredients

Calcium phosphate, cellulose, stearic acid (vegetable source) and magnesium stearate (vegetable source).

No wheat, no gluten, no soybeans, no dairy, no egg, no fish/shellfish, no peanuts/tree nuts.

Alpha Lipoic Sustain 300 - Microsoft Internet Explorer provided by Davis Munck PC

http://www.jarrow.com/product/281/Alpha_Lipoic_Sustain_300

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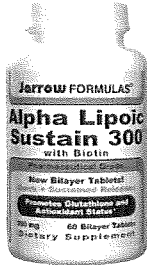
Wholesale Orders

orders@jarrow.com

(310) 204-8828

Alpha Lipoic Sustain™ 300

Promotes Glutathione and Powerful Antioxidant



Product Data

Dosage: 300 mg

Size: 60 Bilayer Tablets

Category: Minerals

Product Number: 120010

Product Code: AL-300

[Print product info](#)

PRODUCT HIGHLIGHTS

- Optimized Lipoic Acid Formulation
- The Universal Antioxidant - Biotin
 - Recycles fat & water soluble vitamins
- Bilayer Release Technology
 - 1/3 Quick, 2/3 Sustained Release
- Promotes Carbohydrate Metabolism*

What does Alpha Lipoic Sustain™ 300 do?

Alpha Lipoic Sustain® 300 is in a bilayer Quick Release/Sustained Release format to maximize blood levels and to minimize gastric irritation and blood sugar fluctuations.* Alpha Lipoic Acid is a unique lipid and water soluble antioxidant that is a cofactor in energy production, helping to regulate glucose metabolism.* ALA also promotes the synthesis of glutathione.* Biotin is added for optimum ALA activity.*

The advanced bilayer technology combines 1/3 Quick

Supplement Facts

Serving Size 1 Tablet

	Amount Per Tablet	% DV
Biotin	333 mcg	111%
Alpha Lipoic Acid	300 mg	

* Daily Value not established.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Suggested Usage

Take 1 to 2 tablets per day with meals, or as directed by your qualified health care consultant.

Note: Individuals who are diabetic, being treated for glucose control, pregnant or lactating should consult a health care professional before using this product.


Other Ingredients

Polyacrylate polymer, calcium phosphate, cellulose, stearic acid (vegetable source), magnesium stearate (vegetable source), silicon dioxide, vanilla and beet root powder (for color).

Suitable for vegetarians/vegans.

No wheat, no gluten, no soybeans, no dairy, no egg, no fish/shellfish, no peanuts/tree nuts.

You May Also Be Interested In



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition has been served on Applicant's Attorney, Mark. D. Giarratana, McCarter & English, LLP, City Place I, 185 Asylum Street, Hartford, CT 06103-3495, via first class mail on this 14th day of October, 2008.

A handwritten signature in cursive script, reading "Robert D. McCutcheon", written over a horizontal line.

Robert D. McCutcheon