

ESTTA Tracking number: **ESTTA266250**

Filing date: **02/12/2009**

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	Balance Bar Company
Granted to Date of previous extension	03/11/2009
Address	Three Lakes Drive Northfield, IL 60093 UNITED STATES

Correspondence information	Susan H. Frohling Trademark Counsel BALANCE BAR COMPANY Three Lakes Drive Northfield, IL 60093 UNITED STATES trademark@kraft.com Phone:(847) 646-8657
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**Applicant Information**

Application No	77540338	Publication date	11/11/2008
Opposition Filing Date	02/12/2009	Opposition Period Ends	03/11/2009
Applicant	PHARMAVITE LLC P.O. Box 9606 Mission Hills, CA 913469606 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. Opposed goods and services in the class: DIETARY SUPPLEMENTS AND NUTRITIONAL BARS
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**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. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		

Design Mark	<h1>BALANCE</h1>
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars

U.S. Registration No.	3036771	Application Date	05/10/2004
Registration Date	12/27/2005	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark	<h1>BALANCE BAR</h1>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars		

U.S. Registration No.	3436917	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	BALANCE BARE		

Design Mark	<b>BALANCE BARE</b>
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	<b>BALANCE GOLD</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

Attachments	76194400#TMSN.gif ( 1 page )( bytes ) 78416165#TMSN.jpeg ( 1 page )( bytes ) 77053653#TMSN.jpeg ( 1 page )( bytes ) 75854595#TMSN.gif ( 1 page )( bytes ) EQUOL BALANCE Notice of Opposition.pdf ( 10 pages )(956684 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	/Susan H. Frohling/
Name	Susan H. Frohling

Date	02/12/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Trademark Application Serial No. 77/540338  
Filed: August 6, 2008  
For the Mark: **EQUOL BALANCE**

Balance Bar Company	)
	)
Opposer,	)
	)
v.	)
	)
Pharmavite LLC	)
	)
Applicant.	)
	)

**NOTICE OF OPPOSITION**

Opposer, Balance Bar Company, a Delaware corporation with a business address of Three Lakes Drive, Northfield, Illinois 60093, hereby opposes registration of the mark EQUOL BALANCE that is the subject matter of Application Serial No. 77/540338, published in the *Official Gazette* of November 11, 2008, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer states as follows:

**CLAIM I – SECTION 2(d)**

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has engaged in the manufacture and sale of snack bar products throughout the United States sold under the BALANCE trademark.

2. By virtue of the excellence of Opposer's BALANCE products and extensive promotional activities and sales thereof, the BALANCE mark is a famous mark such that the public has come to identify the business and products denominated by the mark as those of Opposer.

3. Opposer is the owner of numerous registrations in the United States Patent and Trademark Office for the BALANCE trademark, including:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2745850	Protein based, nutrient-dense snack bars
BALANCE BAR	3036771	Protein based, nutrient-dense snack bars
BALANCE BARE	3436917	Protein based, nutrient-dense snack bars; and grain-based food bars also containing fruits and nuts
BALANCE GOLD	2636101	Snack bars

The registrations are valid and subsisting in the name of Balance Bar Company. Packaging images of the Opposer's BALANCE trademark are attached hereto as Exhibit A.

4. Applicant has filed an intent to use application to register the mark EQUOL BALANCE for dietary supplements and nutritional bars in Class 5. "Nutritional bars" are identical to the goods sold by Opposer and may be purchased for the same reasons and consumed by the same persons on the same occasions as in the case of Opposer's BALANCE products.

5. The mark Applicant seeks to register, EQUOL BALANCE is confusingly similar to the BALANCE mark phonetically and in its spelling.

6. Registration of the EQUOL BALANCE mark by Applicant in connection with its goods is likely to cause confusion or mistake or deceive customers or potential customers with respect to Opposer and its BALANCE products in that purchasers or potential purchasers of Opposer's goods, upon encountering applicant's goods offered under the EQUOL BALANCE mark, will believe, and will be justified in believing, that the goods offered by Applicant under its confusing similar mark are in fact those of Opposer, or are related to or are associated with or sponsored by Opposer, thereby creating a likelihood of confusion, or mistake or deception.

7. Any defects, inadequacies or fault found with Applicant's goods sold under the EQUOL BALANCE mark could, because of the similarity of the mark to Opposer's BALANCE trademark, reflect upon Opposer and seriously injure the reputation that Opposer has established for the products that it offers under the BALANCE trademark.

8. The registration of Applicant's mark EQUOL BALANCE will interfere with the use by Opposer of the BALANCE trademark.


#### CLAIM II – DILUTION

9. Opposer repeats and realleges the allegations of Paragraphs 1 through 8 above as though full set forth herein.

10. The registration of Applicant's mark EQUOL BALANCE would dilute the distinctiveness of Opposer's mark, and, as such, would violate the provisions of Section 43(c) of the Trademark Act of 1946, and therefore is not entitled to registration.

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/540338 in Class 5, and requests the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,

  
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Susan H. Frohling  
Attorney for Opposer  
Balance Bar Company  
Three Lakes Drive  
Northfield, IL 60093  
Telephone: (847) 646-8657  
Facsimile: (847) 646-5101

Date: February 12, 2009

Enclosure – Exhibit A



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 12, 2009, a copy of the foregoing Notice of Opposition is being served first class mail to the Applicant's Attorney of Record at the following address:

Stanley W. Sokoloff  
BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 Wilshire Boulevard  
7th Floor  
Los Angeles, CA 90025-1040

Signed:   
Lynn Eichelberger  
Trademark Legal Assistant  
Kraft Foods  
E-mail: [lynn.eichelberger@kraft.com](mailto:lynn.eichelberger@kraft.com)  
Telephone: (847) 646-3034  
Facsimile: (847) 646-5101

# EXHIBIT A

**NEW!**

NET WT

**NUTRITION ENERGY BAR / 10g Protein / 5g Fiber**



# BALANCE ORGANIC

**/ apricot mango crisp natural flavor with other natural flavor**

7910102  
**NET WT 1.580Z (45g)**

**HEB**  
**HOT**

new!

# BALANCE BAR®

## 100 calories

NUTRITION ENERGY SNACK BAR

vanilla caramel crisp  
NATURAL FLAVOR WITH OTHER NATURAL FLAVOR

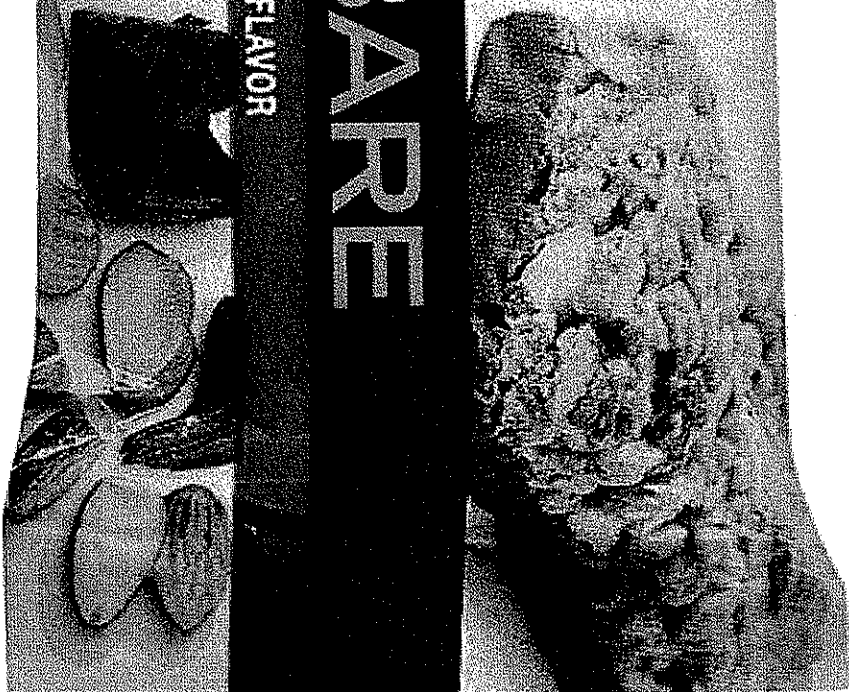
NET WT 0.98 OZ (28g)

NUTRITION ENERGY BAR / 13g Protein

# BALANCOE BARS

/ Sweet & salty chocolate almond natural flavor

NET WT 1.76 OZ (50g)



NUTRITION ENERGY BAR / High Protein

# BALANCE GOLD

/ caramel nut blast natural flavor with other natural flavor

NET WT 1.76 OZ (50g)

®

