

TRADE MARK

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

Applicant : Schiff Nutrition International
Serial No. : 77-639,145
Filed : December 23, 2008
Mark : **SLEEP TONIGHT**
Int'l Class : 5
For : Dietary and nutritional supplements; dietary food supplements; dietary supplements; dietary supplements for human consumption
Published : April 21, 2009

Nature's Way Holding Company)
and Enzymatic Therapy, Inc.,)
)
Opposers,)
)
v.)
)
Schiff Nutrition International,)
)
Applicant.)

Opposition No. _____

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Nature's Way Holding Company and Enzymatic Therapy, Inc., corporations of the state of Wisconsin, having their principal place of business at 825 Challenger Drive, Green Bay, Wisconsin 54311 (hereinafter referred to as "Opposers") believe they will be damaged by registration of the mark shown in the above-identified application on the Principal Register (hereinafter referred to as "Applicant's Mark") by Schiff Nutrition International, (hereinafter referred to as "Schiff" or "Applicant") and hereby opposes the same.

As grounds for this opposition, Opposers, upon information and belief, allege as follows:

1. Opposer, Nature's Way Holding Company, through its wholly owned subsidiary Enzymatic Therapy, Inc., is and has for more than a year prior to Applicant's filing date of December 23, 2008, been engaged in the manufacture and sale of dietary supplements under the mark SLEEP TONIGHT, which are sold throughout the United States to various retail outlets for resale. (Exhibit A attached hereto shows an example of such prior use of SLEEP TONIGHT by Opposers.)

2. Opposers are and have been using the mark SLEEP TONIGHT in interstate commerce in connection with dietary supplements.

3. On information and belief, Applicant's mark SLEEP TONIGHT and the December 23, 2008, filing date of its application Serial No. 77-639,145 is well after the first use of Opposers' mark SLEEP TONIGHT.

4. The mark SLEEP TONIGHT sought to be registered by Applicant is substantially identical to the Opposers' mark, and, on information and belief, Applicant seeks to register it in connection with goods which are identical to and are offered through the same or similar channels of trade and to the same consumers as Opposers' goods.

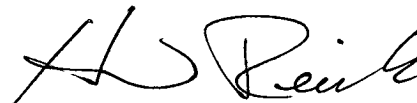
5. Opposers believe that Applicant's alleged mark, when applied to Applicant's goods as intended, so resembles Opposers' mark as to be likely to cause confusion, to cause mistake, or to deceive, all to Opposers' irrevocable damage and injury.

WHEREFORE, Opposers pray that this Opposition be sustained and that registration of Applicant's Mark be refused.

Respectfully submitted,

NATURE'S WAY HOLDING COMPANY
AND ENZYMATIC THERAPY, INC.

By: PRICE, HENEVELD, COOPER,
DEWITT & LITTON, LLP



H.W. Reick, Reg. No. 25438
695 Kenmoor, S.E.
P.O. Box 2567
Grand Rapids, Michigan 49501
616/949-9610

May 15, 2009
Date

HWR:dal



EXHIBIT A

CERTIFICATE OF MAILING

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to Attn: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on the date indicated below.

May 15, 2009
Date

Dana A. Lozon
Dana A. Lozon

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TTAB

Nature's Way Holding Company)
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)
Opposers,)
)
05/20/2009 SWILSDH: 00000011 77639145)
)
01 FC:6402 v. 300.00 DP)
)
Schiff Nutrition International,)
)
Applicant.)

Opposition No. _____

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

TRANSMITTAL LETTER

Enclosed please find two copies of a Notice of Opposition to be filed with the Trademark Trial and Appeal Board.



05-18-2009

Applicant : Schiff Nutrition International
Serial No. : 77-639,145
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A check for the opposition fee in the amount of Three Hundred Dollars (\$300) is also enclosed. Please charge any additional fees, or credit overpayment, to Deposit Account No. 16-2463. A duplicate copy of this Transmittal Letter is enclosed.

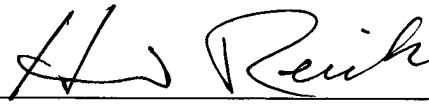
Kindly date stamp and return the enclosed postcard to acknowledge receipt of this request.

Respectfully submitted,

NATURE'S WAY HOLDING COMPANY
AND ENZYMATIC THERAPY, INC.

By: Price, Heneveld, Cooper,
DeWitt & Litton, LLP

May 15, 2009
Date


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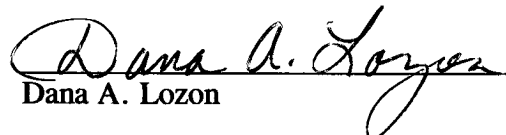
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Transmittal Letter, the Notice of Opposition and Exhibit A were served on Schiff Nutrition International by mailing, first class mail, postage prepaid to:

Mr. Preston C. Regehr
TechLaw Ventures, PLLC
333 South 520 West, Suite 220
Lindon, UT 84042

this 15th day of May, 2009.

May 15, 2009
Date


Dana A. Lozon

HWR:dal