

ESTTA Tracking number: **ESTTA294472**

Filing date: **07/09/2009**

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	Johnson & Johnson		
Entity	Corporation	Citizenship	New Jersey
Address	One Johnson & Johnson Plaza New Brunswick, NJ 08933-7001 UNITED STATES		

Attorney information	Norm D. St Landau Drinker Biddle & Reath LLP 1500 K Street, N.W., Ste. 1100 Washington, DC 20005-1209 UNITED STATES dctrademarks@dbr.com, jaye.campbell@dbr.com Phone:202-842-8800		
----------------------	---	--	--

Applicant Information

Application No	77622662	Publication date	06/09/2009
Opposition Filing Date	07/09/2009	Opposition Period Ends	07/09/2009
Applicant	Olnatura, Inc. Suite 4C 494 W. Boughton Rd. Bolingbrook, IL 60440 UNITED STATES		

Goods/Services Affected by Opposition

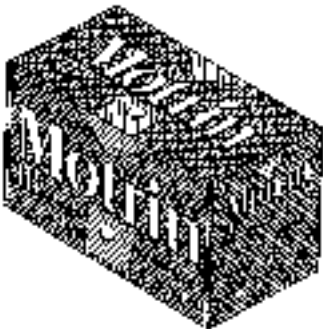
<p>Class 005. First Use: 2007/06/01 First Use In Commerce: 2007/06/01 All goods and services in the class are opposed, namely: Homeopathic pharmaceuticals for use in the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical preparations and substances for the treatment of gastro-intestinal diseases; Pharmaceutical preparations for the prevention of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical preparations for the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical products for the treatment of viral and infectious diseases, for the treatment of cancer</p>
--

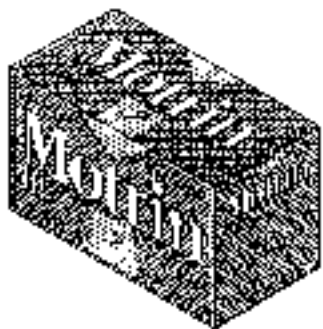
Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	904181	Application Date	06/24/1970
Registration Date	12/15/1970	Foreign Priority Date	NONE
Word Mark	MOTRIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U018 (International Class 005). First use: First Use: 1970/04/13 First Use In Commerce: 1970/04/13 ANTIINFLAMMATORY AGENT		

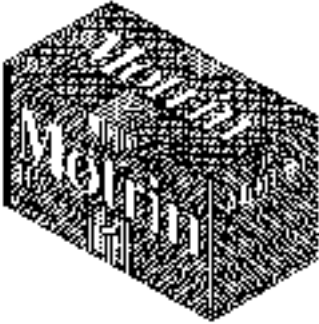
U.S. Registration No.	2371519	Application Date	02/13/1998
Registration Date	07/25/2000	Foreign Priority Date	NONE
Word Mark	MOTRIN IB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/12/23 First Use In Commerce: 1998/12/23 PHARMACEUTICAL PREPARATIONS- NAMELY, ANALGESICS		

U.S. Registration No.	2390239	Application Date	02/13/1998
Registration Date	09/26/2000	Foreign Priority Date	NONE
Word Mark	MOTRIN IB		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/09/25 First Use In Commerce: 1998/09/25 PHARMACEUTICAL PREPARATIONS- NAMELY, ANALGESICS

U.S. Registration No.	2371520	Application Date	02/13/1998
Registration Date	07/25/2000	Foreign Priority Date	NONE

Word Mark	MOTRIN IB
-----------	-----------

Design Mark	
-------------	---

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/10/15 First Use In Commerce: 1998/10/15 PHARMACEUTICAL PREPARATION, NAMELY, ANALGESICS

Attachments	75433860#TMSN.gif (1 page)(bytes) 75433872#TMSN.gif (1 page)(bytes) 75433948#TMSN.gif (1 page)(bytes) MODIN opposition.pdf (11 pages)(509421 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	/Jaye S. Campbell/
Name	Jaye S. Campbell
Date	07/09/2009

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

In re Ser. No. 77/622,662 – MODIN
Published: June 9, 2009

JOHNSON & JOHNSON,	:	
		Opposer,
v.	:	Opposition No. 91-_____
OLNATURA, INC.,	:	
Applicant.	:	

NOTICE OF OPPOSITION

JOHNSON & JOHNSON, a New Jersey corporation, having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 (“Opposer”), believes that it will be damaged by the registration of Ser. No. 77/622,662 – MODIN for “homeopathic pharmaceuticals for use in the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations and substances for the treatment of gastro-intestinal diseases; pharmaceutical preparations for the prevention of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations for the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical products for the treatment of viral and infectious diseases, for the treatment of cancer” in Class 5; filed on November 26, 2008 by Olnatura, Inc., an Illinois corporation, having an address at 494 W.

Boughton Rd., Suite 4C, Bolingbrook, Illinois 60440 (“Applicant”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for its opposition, Opposer states:

1. Opposer, through its wholly-owned subsidiary, has adopted and is using the MOTRIN, MOTRIN IB, CHILDREN’S MOTRIN, and CHILDREN’S MOTRIN COLD marks, and variations thereof (herein the “MOTRIN Marks”) for a range of pain-relief products, including products for treating cold and flu symptoms.

2. Opposer, through its wholly-owned subsidiary, has been continuously using the MOTRIN Marks for pain-relief and cold-relief products since as early as 1970.

3. To protect its rights in the MOTRIN Marks, Opposer owns:

- a. Reg. No. 904,181 – MOTRIN for “ant inflammatory agent” in Class 5; registered December 15, 1970, with a claim of use since April 13, 1970.
- b. Reg. No. 2,371,519 – MOTRIN IB & Design for “pharmaceutical preparations, namely, analgesics” in Class 5; registered July 25, 2000, with a claim of use since December 23, 1998.
- c. Reg. No. 2,390,239 – MOTRIN IB & Design for “pharmaceutical preparations- namely, analgesics” in Class 5; registered September 26, 2000, with a claim of use since September 25, 1998.
- d. Reg. No. 2,371,520 – MOTRIN IB & Design for “pharmaceutical preparations- namely, analgesics” in Class 5; registered July 25, 2000, with a claim of use since October 15, 1998.

Copies of the foregoing registrations are attached hereto as Exhibits A-D.

Count I: Likelihood of Confusion

4. Since before the November 26, 2008 filing date of Ser. No. 77/622,662 – MODIN, Opposer, through its wholly-owned subsidiary, has sold millions of dollars of pain-relief and cold-relief products identified by the MOTRIN Marks.

5. Opposer, through its wholly-owned subsidiary, has extensively advertised products identified by the MOTRIN Marks to the trade and to the general public in various media, including national print publications, television and the internet.

6. By virtue of its extensive sales and promotion, Opposer's MOTRIN Marks have become well-known in the trade and to the general public, and have acquired a high degree of distinctiveness indicating source in the Opposer.

7. Applicant's MODIN mark is substantially similar to Opposer's MOTRIN Marks in appearance, sound and commercial impression.

8. The goods for which Applicant seeks to register the MODIN mark and the goods on which Opposer, through its wholly-owned subsidiary, has used and registered the MOTRIN Marks are identical or otherwise closely related.

9. The goods for which Applicant seeks to register the MODIN mark can be used in connection with treating cold and flu symptom.

10. The goods on which Opposer, through its wholly-owned subsidiary, has used and registered the MOTRIN Marks can be used in connection with treating cold and flu symptoms.

11. The goods on which Opposer, through its wholly-owned subsidiary, has used and registered the MOTRIN Marks and the goods for which Applicant seeks to register the MODIN mark are likely to be sold through identical channels of trade.

12. The goods on which Opposer, through its wholly-owned subsidiary, has used and registered the MOTRIN Marks and the goods for which Applicant seeks to register the MODIN mark are likely to be sold to identical classes of consumers.

13. The proposed use and registration by Applicant of the MODIN mark for the goods identified in Ser. No. 77/622,662 is likely to cause confusion, mistake or deception by

having the public erroneously assume or believe that such goods emanate from Opposer, or are in some other way associated or connected with Opposer's prior use of the MOTRIN Marks, all to Opposer's irreparable damage.

Count II: Likelihood of Dilution

14. Opposer's MOTRIN Marks are famous among the general consuming public of the United States within the meaning of 15 U.S.C. § 1125(c).

15. The proposed use and registration by Applicant of the MODIN mark for the goods identified in Ser. No. 77/622,662 is likely to cause dilution of the distinctive quality of Opposer's famous MOTRIN Marks in violation of 15 U.S.C. §§ 1063(a) and 1125(c).

Count III: Fraud on the Trademark Office

16. Application Ser. No. 77/662,622 claims June 1, 2007 as the date of first use in commerce for all of the following goods: "homeopathic pharmaceuticals for use in the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations and substances for the treatment of gastro-intestinal diseases; pharmaceutical preparations for the prevention of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations for the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical products for the treatment of viral and infectious diseases, for the treatment of cancer."

17. On information and belief, Applicant has not sold in interstate commerce some of the goods identified in Ser. No. 77/622,662 – MODIN as of the filing date of such application.

18. On information and belief, Applicant has not shipped in interstate commerce some of the goods identified in Ser. No. 77/622,662 – MODIN as of the filing date of such application.

19. On information and belief, Applicant has not used the MODIN mark in interstate commerce in connection with some of the goods identified in Ser. No. 77/622,662 as of the filing date of such application.

20. On information and belief, Applicant has not sold in interstate commerce some of the goods identified in Ser. No. 77/622,662 – MODIN as of the filing date of this Notice of Opposition.

21. On information and belief, Applicant has not shipped in interstate commerce some of the goods identified by the MODIN mark identified Ser. No. 77/622,662 as of the filing date of this Notice of Opposition.

22. On information and belief, Applicant has not used the MODIN mark in interstate commerce in connection with some of the goods identified in Ser. No. 77/622,662 as of the filing date of this Notice of Opposition.

23. In connection with application Ser. No. 77/622,662 – MODIN, Applicant's attorney, Kenneth S. McLaughlin, Jr. ("Applicant's Signatory") declared under oath, being warned that willful false statements may jeopardize the validity of the application, that all statements made of his own knowledge are true.

24. On information and belief, Applicant's Signatory knew or should have known that Applicant was not using the MODIN mark in connection with all of the goods identified in Ser. No. 77/622,662 when such application was filed.

25. On information and belief, Applicant's Signatory's declaration that the MODIN mark is in use with all the goods recited in Ser. No. 77/622,662 contains a materially false statement, made in bad faith and in an attempt to perpetrate a fraud upon the Trademark Office.

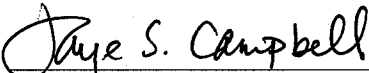
26. On information and belief, the conduct of Applicant's Signatory constitutes fraud on the Trademark Office, and application Ser. No. 77/622,662 should be denied registration.

For the reasons set forth above, Opposer believes and believing asserts that it will be damaged by the registration of Ser. No. 77/622,662 – MODIN. Accordingly, Opposer prays that this opposition be sustained, and that Applicant be refused registration of the MODIN mark for the goods set forth in application Ser. No. 77/622,662.

The \$300.00 filing fee has been submitted electronically. Should additional fees be required please charge them to the deposit account of Opposer's counsel, No. 50-0573.

Respectfully submitted,

JOHNSON & JOHNSON

By: 

Norm D. St. Landau

Brian A. Coleman

Jaye S. Campbell

Drinker Biddle & Reath LLP

1500 K Street, N.W., Suite 1100

Washington, D.C. 20005

Tel: (202) 842-8800

Fax: (202) 842-8465

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant's counsel of record at the following address, by first class mail, postage prepaid, this 9th day of July 2009:

Kenneth S. McLaughlin, Jr.
Esp, Kreuzer, Cores & McLaughlin, LLP
400 S. County Farm Road
Suite 200
Wheaton, L 60187



Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 904,181

Registered Dec. 15, 1970

Renewal Approved Nov. 13, 1990

**TRADEMARK
PRINCIPAL REGISTER**

MOTRIN

UPJOHN COMPANY, THE (DELAWARE
CORPORATION)
7000 PORTAGE ROAD
KALAMAZOO, MI 49001, ASSIGNEE BY
MESNE ASSIGNMENT UPJOHN COM-
PANY, THE (DELAWARE CORPORA-
TION) KALAMAZOO, MI

OWNER OF U.S. REG. NO. 713,798.
FOR: ANTIINFLAMMATORY AGENT,
IN CLASS 18 (INT. CL. 5).
FIRST USE 4-13-1970; IN COMMERCE
4-13-1970.
SER. NO. 72-363,500, FILED 6-24-1970.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Dec. 25, 1990.*

EXHIBIT A

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 5

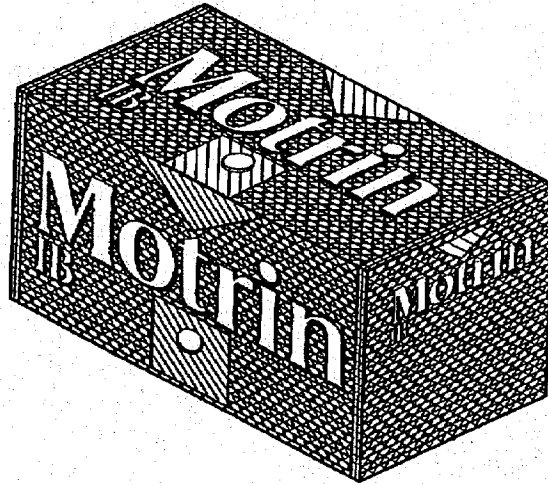
Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,371,519

Registered July 25, 2000

**TRADEMARK
PRINCIPAL REGISTER**



JOHNSON & JOHNSON (NEW JERSEY CORPORATION)
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 089337001

FOR: PHARMACEUTICAL PREPARATIONS-
NAMELY, ANALGESICS, IN CLASS 5 (U.S. CLS. 6,
18, 44, 46, 51 AND 52).

FIRST USE 12-23-1998; IN COMMERCE
12-23-1998.

OWNER OF U.S. REG. NO. 904,181.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT
TO USE THE REPRESENTATION OF THE PILL DE-
SIGN AND THE RECTANGULAR BOX CONFIGURA-
TION, APART FROM THE MARK AS SHOWN.

THE DRAWING IS LINED FOR THE COLORS
GOLD, ORANGE AND GREEN.

SN 75-433,860, FILED 2-13-1998.

BARNEY CHARLON, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 5

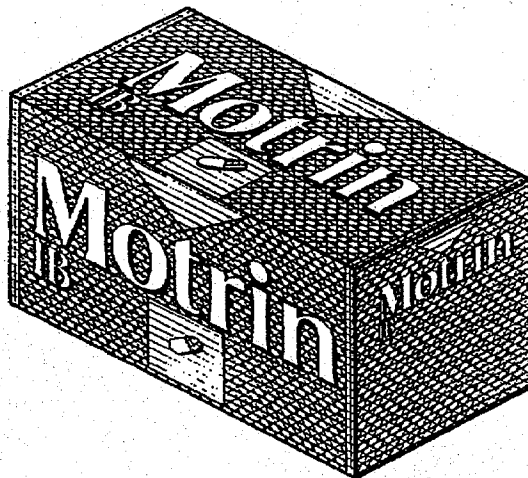
Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,390,239

United States Patent and Trademark Office

Registered Sep. 26, 2000

**TRADEMARK
PRINCIPAL REGISTER**



JOHNSON & JOHNSON (NEW JERSEY CORPORATION)
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 089337001

FOR: PHARMACEUTICAL PREPARATIONS-
NAMELY, ANALGESICS, IN CLASS 5 (U.S. CLS. 6,
18, 44, 46, 51 AND 52).

FIRST USE 9-25-1998; IN COMMERCE 9-25-1998.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT
TO USE THE OVAL CONFIGURATION OF THE CAP-
SULE AND THE RETANGULAR BOX CONFIGURA-
TION, APART FROM THE MARK AS SHOWN.

THE DRAWING IS LINED FOR THE COLORS
GOLD, ORANGE AND BLUE.

SN 75-433,872, FILED 2-13-1998.

BARNEY CHARLON, EXAMINING ATTORNEY

Int. Cl.: 5

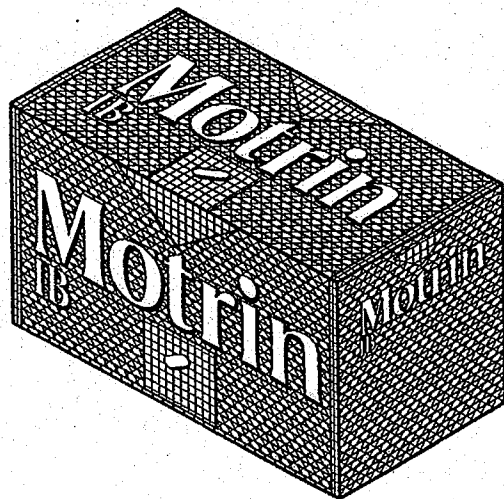
Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,371,520

United States Patent and Trademark Office

Registered July 25, 2000

TRADEMARK
PRINCIPAL REGISTER



JOHNSON & JOHNSON (NEW JERSEY CORPORATION)
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 089337001

FOR: PHARMACEUTICAL PREPARATION, NAME-
LY, ANALGESICS, IN CLASS 5 (U.S. CLS. 6, 18,
44, 46, 51 AND 52).

FIRST USE 10-15-1998; IN COMMERCE
10-15-1998.
OWNER OF U.S. REG. NO. 904,181.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT
TO USE THE REPRESENTATION OF THE PILL DE-
SIGN AND A RECTANGULAR BOX CONFIGURA-
TION, APART FROM THE MARK AS SHOWN.

THE DRAWING IS LINED FOR THE COLORS
GOLD, ORANGE AND YELLOW.

SN 75-433,948, FILED 2-13-1998.

BARNEY CHARLON, EXAMINING ATTORNEY