

ESTTA Tracking number: **ESTTA338525**

Filing date: **03/22/2010**

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	VDF FutureCeuticals, Inc.
Granted to Date of previous extension	03/21/2010
Address	300 West Sixth Street Momence, IL 60954 UNITED STATES

Attorney information	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street Capella Tower, Suite 3500 Minneapolis, MN 55402 UNITED STATES sbaird@winthrop.com, sarmstrong@winthrop.com, jrezac@winthrop.com, trademark@winthrop.com
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Applicant Information

Application No	77763296	Publication date	09/22/2009
Opposition Filing Date	03/22/2010	Opposition Period Ends	03/21/2010
Applicant	Nature's Sunshine Products, Inc. 75 East 1700 South P.O. Box 19005 Provo, UT 84605 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Powdered nutritional supplement drink mix
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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.	3527544	Application Date	02/02/2004
Registration Date	11/04/2008	Foreign Priority Date	NONE
Word Mark	NUTRIM		

Design Mark	NUTRIM		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Oat bran-based dietary supplements		

U.S. Registration No.	3081622	Application Date	02/02/2004
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	NUTRIM		
Design Mark	NUTRIM		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Food ingredient, namely, processed whole oats		

U.S. Registration No.	3286745	Application Date	11/12/2002
Registration Date	08/28/2007	Foreign Priority Date	NONE
Word Mark	NUTRIM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Oat bran hydrocolloid for use as a dietary supplement Class 030. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Food additive, namely, oat bran hydrocolloid for use as an ingredient		

Attachments	78360958#TMSN.jpeg (1 page)(bytes) 78360960#TMSN.gif (1 page)(bytes) 78184289#TMSN.gif (1 page)(bytes) NUTRIMOR Opposition.pdf (9 pages)(285403 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	/sda/
Name	Sharon D. Armstrong
Date	03/22/2010

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

In the matter of Application Serial No.: 77/763,296
Filed: June 18, 2009
For the mark: NUTRIMOR
Published in the *Trademark Official Gazette* on September 22, 2009

VDF FUTURECEUTICALS, INC.

Opposer,

v.

Opposition No. _____

NATURE'S SUNSHINE PRODUCTS, INC.

Applicant.

NOTICE OF OPPOSITION

VDF FutureCeuticals, Inc. ("Opposer"), believes that it will be damaged by registration of the NUTRIMOR mark shown in Application Serial No. 77/763,296 (the "Application") in International Class 005 and hereby opposes the same.

The grounds for opposition are as follows:

1. Nature's Sunshine Products, Inc. ("Applicant") seeks to register NUTRIMOR as a trademark for "powdered nutritional supplement drink mix" In International Class 005 ("Applicant's Goods").

2. Applicant's filing date for the Application is June 18, 2009.

3. Applicant's claimed NUTRIMOR mark was published for opposition in the *Trademark Official Gazette* on September 22, 2009. On October 22, 2009, the Board granted Opposer's request to extend the period of opposition until January 20, 2010, and on January 20,

2010 the Board granted Opposer's request to extend the period of opposition until Sunday, March 21, 2010.

4. Opposer is a vertically integrated bio-technology company that specializes in the discovery, development, manufacturing, processing, growing and marketing of scientifically innovative nutraceuticals, dietary and nutritional supplements, food and beverage products and ingredients, functional foods, and cosmetic and skin care ingredients.

5. Opposer is the owner of numerous federal trademark registrations for the mark NUTRIM® (the "NUTRIM® Marks").

6. Opposer adopted and has continuously used the NUTRIM® Marks in connection with dietary supplements since at least as early as February 22, 2001.

7. Opposer is the record owner of U.S. Trademark Registration No. 3,527,544 for NUTRIM in connection with "oat bran-based dietary supplements" in International Class 005, claiming a first use date at least as early as February 22, 2001. The Registration was issued on the Principal Register on November 4, 2008.

8. Opposer is the record owner of U.S. Trademark Registration No. 3,081,622 for NUTRIM in connection with "food ingredient, namely, processed whole oats" in International Class 030, claiming a first use date at least as early as February 22, 2001. The Registration was issued on the Principal Register on April 18, 2006.

9. Opposer is the record owner of U.S. Trademark Registration No. 3,286,745 for **Nutrim** in connection with "oat bran hydrocolloid for use as a dietary supplement" in International Class 005 and "food additive, namely, oat bran hydrocolloid for use as an ingredient" in International Class 030, claiming a first use date at least as early as February 22, 2001. The Registration was issued on the Principal Register on August 28, 2007.

10. Attached hereto as Exhibit A are true and correct copies of Opposer's federal trademark registrations for Opposer's NUTRIM® Marks.

11. Opposer has spent a considerable amount of time, effort, expense, and resources in developing, promoting, advertising, and popularizing its distinctive NUTRIM® Marks, such that the purchasing public has come to know, rely upon, and recognize these marks as strong indicators of the source of the goods offered under the NUTRIM® Marks.

12. Opposer commenced use of its NUTRIM® Marks in commerce over eight (8) years prior to the June 18, 2009 filing date of the Application. Opposer has continuously used in commerce, from the dates set forth in the corresponding registrations, its NUTRIM® Marks. Consequently, Opposer's registrations have priority over the Application as a result of Opposer's earlier continuous use of its federally registered NUTRIM® Marks.

13. Opposer has priority of common law rights in its NUTRIM® Marks in connection with dietary supplements.

14. Applicant's Goods are identical to or overlap with the goods in connection with which Opposer's NUTRIM® Marks are registered.

15. Applicant's Goods and the goods in connection with which Opposer's NUTRIM® Marks are registered are likely to be sold to identical consumers.

16. Applicant's claimed NUTRIMOR mark so resembles Opposer's NUTRIM® Marks as to be likely, when used in connection with Applicant's Goods, to cause confusion, to cause mistake, or to deceive. Applicant's claimed NUTRIMOR mark and Opposer's NUTRIM® Marks are highly similar in sight and sound. Applicant's claimed NUTRIMOR mark and Opposer's NUTRIM® Marks differ by only two letters and each begins with the string NUTRIM.

17. Because of the close similarity in sight and sound between Applicant's claimed NUTRIMOR mark and Opposer's NUTRIM® Marks and because Applicant's Goods are identical to or overlap with the goods in connection with which Opposer's NUTRIM® Marks are registered, purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant offers and intends to offer under Applicant's claimed NUTRIMOR mark are sponsored, endorsed, or approved by Opposer, or are in some other way affiliated, connected, or associated with Opposer, all to the detriment of Opposer. Registration of the mark shown in the Application should therefore be refused under 15 U.S.C. §§ 1052(d) and 1063.

18. Allowing registration of Applicant's claimed NUTRIMOR mark would further damage Opposer, as registration would confer upon the Applicant various statutory presumptions to which it is not entitled in view of Opposer's prior use and registration of the NUTRIM® Marks.

19. **WHEREFORE**, Opposer prays that Application Serial No. 77/763,296 in International Class 005 be rejected, that registration of the mark therein for the goods therein specified be refused, and that the present opposition be sustained.

Dated: March 22, 2010

WINTHROP & WEINSTINE, P.A.



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Sharon D. Armstrong
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Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400 (Telephone)
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Attorneys for VDF FutureCeuticals, Inc.

Exhibit A

Int. Cl.: 5

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

United States Patent and Trademark Office

Reg. No. 3,527,544

Registered Nov. 4, 2008

**TRADEMARK
PRINCIPAL REGISTER**

NUTRIM

VDF FUTURECEUTICALS, INC. (ILLINOIS CORPORATION)
300 WEST SIXTH STREET
MOMENCE, IL 60954

FOR: OAT BRAN-BASED DIETARY SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 2-22-2001; IN COMMERCE 2-22-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-360,958, FILED 2-2-2004.

KATHLEEN M. VANSTON, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,081,622

Registered Apr. 18, 2006

TRADEMARK
PRINCIPAL REGISTER

NUTRIM

VDF FUTURECEUTICALS, INC. (ILLINOIS COR-
PORATION)
300 WEST SIXTH STREET
MOMENCE, IL 60954

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: FOOD INGREDIENT, NAMELY, PROCES-
SED WHOLE OATS, IN CLASS 30 (U.S. CL. 46).

SER. NO. 78-360,960, FILED 2-2-2004.

FIRST USE 2-22-2001; IN COMMERCE 2-22-2001.

REBECCA GILBERT, EXAMINING ATTORNEY

Int. Cls.: 5 and 30

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

United States Patent and Trademark Office

Reg. No. 3,286,745

Registered Aug. 28, 2007

TRADEMARK
PRINCIPAL REGISTER

The logo for "Nutrim" features the word "Nutrim" in a bold, italicized, sans-serif font. Above the letter "i" is a stylized sun icon consisting of a central black circle with several short, radiating lines.

VDF FUTURECEUTICALS INC. (ILLINOIS CORPORATION)
300 WEST 6TH STREET
MOMENCE, IL 60954

FOR: OAT BRAN HYDROCOLLOID FOR USE AS A DIETARY SUPPLEMENT, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 2-22-2001; IN COMMERCE 2-22-2001.

FOR: FOOD ADDITIVE, NAMELY, OAT BRAN HYDROCOLLOID FOR USE AS AN INGREDIENT, IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-22-2001; IN COMMERCE 2-22-2001.

SN 78-184,289, FILED 11-12-2002.

BERYL GARDNER, EXAMINING ATTORNEY

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

In the matter of Application Serial No.: 77/763,296
Filed: June 18, 2009
For the mark: NUTRIMOR
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VDF FutureCeuticals, Inc.,

Opposer,

v.

Opposition No. _____

Nature's Sunshine Products, Inc.,

Applicant.

CERTIFICATE OF SERVICE BY MAIL

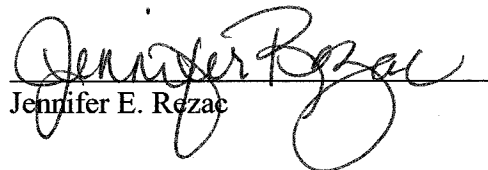
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Jennifer E. Rezac, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 22nd day of March, 2010, she mailed by First-Class mail, a true and correct copy of the

1. Notice of Opposition

in the above-captioned action to the last known correspondent address displayed in the United States Patent and Trademark Office TARR database, to-wit:

Michael E. Mangelson
STOEL RIVES LLP
201 South Main Street
Suite 1100
Salt Lake City, UT 84111-2208



Jennifer E. Rezac