

ESTTA Tracking number: **ESTTA346653**

Filing date: **05/10/2010**

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	Pure & Natural Company
Granted to Date of previous extension	05/08/2010
Address	19001 North Scottsdale Road, MS 04.50 Scottsdale, AZ 85255 UNITED STATES

Attorney information	Eric Nielsen SNELL & WILMER L.L.P. 400 E. Van Buren Phoenix, AZ 85004-2202 UNITED STATES enielsen@swlaw.com, dboyd@swlaw.com, pdemello@swlaw.com Phone: 602 382-6000
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Applicant Information

Application No	77708863	Publication date	03/09/2010
Opposition Filing Date	05/10/2010	Opposition Period Ends	05/08/2010
Applicant	Your Vitamins, Inc. 430 Parkson Road Henderson, NV 89011 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 1979/00/00 First Use In Commerce: 1979/00/00 All goods and services in the class are opposed, namely: Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated skin care preparation, namely, body mist; Non-medicated skin care preparations; Skin and body topical lotions, creams and oils for cosmetic use; Skin cleansers; Skin conditioners; Skin creams; Skin moisturizer; Skin toners
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Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77674128	Application Date	02/19/2009
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DIAL NUTRISKIN WITH FRUIT OIL		
Design Mark	DIAL NUTRISKIN WITH FRUIT OIL		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2009/12/29 First Use In Commerce: 2009/12/29 Bar soap; Bath soaps; Body washes; Liquid soaps		

Attachments	77674128#TMSN.jpeg (1 page)(bytes) 77708863.NtcOpp.pdf (10 pages)(1094848 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	/Eric Nielsen/
Name	Eric Nielsen
Date	05/10/2010

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

In the matter of Trademark Application Serial No. 77/708,863
MARK: NUTRI-SKIN
Published in the *Official Gazette* of March 9, 2010, at page TM 321

<p>Pure & Natural Company, an Arizona corporation,</p> <p style="text-align:right">Opposer,</p> <p style="text-align:center">v.</p> <p>Your Vitamins, Inc., DBA ProCaps Laboratories</p> <p style="text-align:right">Applicant.</p>	<p>Opposition No.: _____</p>
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NOTICE OF OPPOSITION

Pure & Natural Company, an Arizona corporation, with its principal place of business at 19001 North Scottsdale Road, Scottsdale, AZ 85255 (“Opposer”), believes that it will be damaged by the registration of U.S. Trademark Application Serial No. 77/708,863, owned by Your Vitamins, Inc., DBA ProCaps Laboratories, a Nevada corporation, with a place of business at 430 Parkson Road, Henderson, NV 89011 (“Applicant”), for the mark NUTRI-SKIN in connection with “Non-medicated preparations all for the care of skin, hair and scalp; Non-medicated skin care preparation, namely, body mist; Non-medicated skin care preparations; Skin and body topical lotions, creams and oils for cosmetic use; Skin cleansers; Skin conditioners; Skin creams; Skin moisturizer; Skin toners” in International Class 003 (“Applicant’s Mark”).

As grounds for opposition, including grounds under the provisions of Section 13 of the Lanham Act, 15 U.S.C. §1063, as amended, Opposer hereby alleges the following:

1. Consistent with Opposer’s, or its predecessor’s and/or affiliate’s, history of over sixty years marketing and selling personal care products, Opposer has adopted and

continuously used the trademark NUTRISKIN or forms thereof (the “NUTRISKIN Marks”) in connection with body washes, liquid hand soaps, bar soaps and the like, as shown for example, in Exhibit A, and has thereby developed substantial trademark rights in the NUTRISKIN Marks.

2. Evidencing its rights in the NUTRISKIN Marks, Opposer owns Trademark Application Serial No. 77/674,128 for the mark DIAL NUTRISKIN WITH FRUIT OIL in connection with “Bar soap; Bath soaps; Body washes; Liquid soaps” in International Class 003, which was allowed on September 15, 2009 (“Opposer’s Allowed Mark”), and has adopted and continuously used such mark since at least as early as December 29, 2009.

3. In connection with Opposer’s Allowed Mark, a Notice of Acceptance of Statement of Use was mailed on April 22, 2010 (copy attached hereto as Exhibit B).

4. Applicant’s Mark was filed on April 7, 2009, after the February 19, 2009 filing date of Opposer’s Allowed Mark.

5. On July 20, 2009, after Applicant’s Mark was filed, Opposer filed U.S. Trademark Application Serial No. 77/784,687 for the mark DIAL NUTRISKIN in connection with “Bar soap; Bath soaps; Body washes; Hand soaps; Liquid soaps; Skin lotions; Soaps for personal use; Waterless soap” in International Class 003 (“Opposer’s Suspended Mark”).

6. A Suspension Letter citing Applicant’s Mark and suspending Opposer’s Suspended Mark was mailed on September 11, 2009 (copy attached hereto as Exhibit C).

7. Applicant’s Mark was published in the *Official Gazette* of March 9, 2010, at page TM 321.

8. Opposer filed and was granted an extension until May 8, 2010¹ to oppose the registration of Applicant’s Mark.

¹ Pursuant to 37 C.F.R. §2.195, because May 8, 2010 was a Saturday, the deadline to oppose is automatically extended to the next succeeding day which is not a Saturday, Sunday, or a Federal holiday, namely May 10, 2010.

9. Though Applicant has alleged use in commerce in connection with the goods stated in Applicant's Mark since at least as early as 1979, upon information and belief Applicant has never made a bona fide use in commerce of Applicant's Mark, whether prior to or after the filing of Applicant's Mark under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a).

10. Upon information and belief, the specimen filed by Applicant on April 7, 2009 in connection with Applicant's Mark (copy attached hereto as Exhibit D) is merely a printer's proof and has never actually been used in commerce.

11. Alternatively, and upon information and belief, Applicant abandoned use of Applicant's Mark prior to Opposer's filing of Opposer's Allowed Mark.

12. Opposer has spent and continues to spend significant capital and resources advertising and promoting its goods under the NUTRISKIN Marks and as a result, has developed substantial goodwill and consumer recognition in that mark.

13. Opposer's goods bearing the NUTRISKIN Marks are sold at retail outlets including, by way of example, grocery stores and mass merchandisers.

14. The goods recited in Applicant's Mark in International Class 003 are substantially identical to the goods recited in Opposer's Allowed Mark, and in the same class.

15. Upon information and belief, Applicant's Mark is intended to be used on and/or in connection with goods sold to the same or similar consumers, and in the same or similar channels of trade, as the goods sold by Opposer bearing the NUTRISKIN Marks.

16. The NUTRISKIN Marks and Applicant's Mark are substantially similar in sight, sound, and meaning. Consumers are likely to believe that Applicant's NUTRI-SKIN products are a line of products from the same source as Opposer's NUTRISKIN products.

17. Applicant's Mark, if registered and used in connection with the goods in International Class 003 as recited in Applicant's Mark, would be confusingly similar in sight,

sound, meaning, commercial impression and manner of use, to the NUTRISKIN Marks, and would be likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

18. Allowing registration of Applicant's Mark would allow Applicant to unfairly trade upon Opposer's substantial goodwill developed in the NUTRISKIN Marks.

19. Allowing registration of Applicant's Mark would inconsistently and unfairly preclude Opposer from obtaining registration of Opposer's Suspended Mark.

20. Upon information and belief, Applicant is not the rightful owner of the NUTRI-SKIN mark.

21. Upon information and belief, Applicant committed fraud on the United States Patent and Trademark Office in the filing and prosecuting of Applicant's Mark under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a).

22. Opposer would be injured by the granting to Applicant of a registration for Applicant's Mark.

WHEREFORE, Opposer prays that Application Serial No. 77/708,863 be rejected, that no registration be issued thereon, and that this Opposition be sustained in favor of Opposer.

This Notice of Opposition is timely filed within the extension of time granted to Opposer by the Trademark Trial and Appeal Board. As noted in the electronic filing to which the document is attached, the undersigned has authorized payment by deposit account of the filing fee of \$300.00 for opposing an application in one class in accordance with 37 C.F.R. §2.6(a)(17).

Respectfully submitted,
SNELL & WILMER L.L.P.

Dated: May 10, 2010

By: /Eric Nielsen/
Damon L. Boyd
Eric Nielsen
One Arizona Center
400 E Van Buren St
Suite 1900
Phoenix, AZ 85004-2202
Tel. (602) 382-6337
Attorneys for Opposer
Pure & Natural Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition is being deposited in the United States mail, first class postage prepaid, to Applicant at the address and on the date indicated below:

Andrew Lessman, CEO
Your Vitamins, Inc., dba ProCaps Laboratories
430 Parkson Road
Henderson, Nevada 89011-4040

Date: May 10, 2010

By: /Eric Nielsen/

EXHIBIT A



Dial

**JOIN DIAL® NUTRISKIN AND PADMA LAKSHMI
IN HELPING WOMEN EMBRACE
THEIR INNER BEAUTY.**

Padma Lakshmi and Dial® NutriSkin are working together to raise money for charity. Become a fan of Dial® on Facebook and we will donate \$1 to The Endometriosis Foundation of America. This nonprofit charity, which Padma helped start, funds medical research for endometriosis and educates women like Padma, who suffer from the condition. With your help, we can reach our goal of \$30,000!

TO BECOME A FAN
CLICK HERE 

TOP CHEF
Wednesdays 9/8c  

\$1 OFF COUPON Click Here For \$1 Off Of Any Dial® NutriSkin Product.

Dial NutriSkin
with fruit oil
Grape Seed Oil & Lemongrass

CL OSE 

EXHIBIT B

From: TMOfficialNotices@USPTO.GOV
Sent: Thursday, April 22, 2010 00:11 AM
To: trademarks@us.henkel.com
Subject: Trademark Serial Number 77674128 : Official USPTO Notice of Acceptance of Statement of Use

NOTICE OF ACCEPTANCE OF STATEMENT OF USE

Serial Number: 77-674,128
Mark: DIAL NUTRISKIN WITH FRUIT OIL(STANDARD CHARACTER MARK)
Owner: Pure & Natural Company
Reference Number: efile - dial

The USPTO has accepted the Statement of Use filed for the trademark application identified above. The mark will now register and the registration certificate will issue in due course barring any extraordinary circumstances.

For further information, including information on filing and maintenance requirements for U.S. trademark applications and registrations and required fees, please consult the USPTO website at www.uspto.gov or call the Trademark Assistance Center at 1-800-786-9199.

To check the status of an application, go to <http://tarr.uspto.gov/>.

EXHIBIT C

To: Pure & Natural Company (trademarks@us.henkel.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77784687 - DIAL NUTRISKIN - pc-dial nutr
Sent: 9/11/09 6:32:23 PM
Sent As: ECOM112@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/784687

MARK: DIAL NUTRISKIN

77784687

CORRESPONDENT ADDRESS:
A. KATE HUFFMAN
HENKEL OF AMERICA, INC.
19001 N SCOTTSDALE RD
SCOTTSDALE, AZ 85255-9672

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Pure & Natural Company

CORRESPONDENT'S REFERENCE/DOCKET
NO:

pc-dial nutr

CORRESPONDENT E-MAIL ADDRESS:
trademarks@us.henkel.com

NOTICE OF SUSPENSION

ISSUE/MAILING DATE: 9/11/2009

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no similar registered mark that would bar registration under Trademark Act Section 2(d).

TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

Therefore, action on this application is suspended pending the disposition of:

- Application Serial No(s). **77708863**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) is **attached**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

/Mariam Aziz Mahmoudi/
Trademark Examining Attorney
United States Patent & Trademark Office
Law Office 112
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STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT D



Nutri-Skin

ALOE VERA SKIN MOISTURIZER

NUTRI-SKIN ALOE VERA provides an all natural Aloe Vera gel to soothe and protect sun-damaged and irritated skin. The virtues of Aloe have been well-known for over 3,500 years, and it was recognized throughout the ancient world for its healing properties. Aloe was used cosmetically in ancient Egypt, Rome, Greece and Asia and has long been celebrated as one of Mother Nature's best moisturizers. Aloe contains numerous vitamins, minerals, amino acids, enzymes and carbohydrates, which calm and relieve dry skin discomfort and irritation. Use *Nutri-Skin Aloe Vera* typically for minor cuts, skin irritations, non-poisonous insect bites and stings, lip rashes, abrasions, diaper rash, fever blisters, bed sores, sunburn or daily as a moisturizer.

Suggested Use Apply to affected area up to 4 times per day. FOR EXTERNAL USE ONLY.

Ingredients Contains 92% pure Stabilized Aloe Vera Gel, Glycerin, TEA, Carbomer 940, Bromo-2-Nitropropane-1, 3, Allantoin, Germaben II.

Packaged by ProCaps Laboratories, Inc.,
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