

ESTTA Tracking number: **ESTTA365471**

Filing date: **08/27/2010**

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	Cargill, Incorporated
Granted to Date of previous extension	08/29/2010
Address	15407 McGinty Road W Wayzata, MN 55391 UNITED STATES

Attorney information	Allen Hinderaker Merchant & Gould P.C. Suite 3200 80 South Eighth St. Minneapolis, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300
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Applicant Information

Application No	79069571	Publication date	03/02/2010
Opposition Filing Date	08/27/2010	Opposition Period Ends	08/29/2010
International Registration No.	1004445	International Registration Date	02/16/2009
Applicant	Vitality Innovation AS Stavemsveien 2 N-3264 Larvik NORWAY		

Goods/Services Affected by Opposition


Class 031. All goods and services in the class are opposed, namely: Non-medicated additives for animal feed
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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.	3735669	Application Date	03/07/2008
Registration Date	01/12/2010	Foreign Priority Date	NONE
Word Mark	VITALITY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 1919/03/01 First Use In Commerce: 1919/03/01 Horse feed

U.S. Registration No.	876885	Application Date	03/27/1968
Registration Date	09/16/1969	Foreign Priority Date	NONE
Word Mark	VITALITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U018 (International Class 031). First use: First Use: 1968/03/03 First Use In Commerce: 1968/03/05 VITAMIN AND MINERAL PREPARATIONS FOR LIVESTOCK		

Related Proceedings	None
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Attachments	77415766#TMSN.jpeg (1 page)(bytes) 2010 08 27 Notice of Opposition.pdf (13 pages)(410991 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 Overnight Courier on this date.

Signature	/Heather Kliebenstein/
Name	Heather Kliebenstein
Date	08/27/2010

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

Cargill, Incorporated,)	
)	Opposition No. _____
Opposer,)	
)	Mark: DOGVITALITY
v.)	
)	Application Ser. No. 79/069,571
Vitality Innovation AS,)	
)	Filed: February 16, 2009
Applicant.)	
)	Published: March 2, 2010
_____)	

NOTICE OF OPPOSITION

Cargill, Incorporated, a Delaware Corporation, having a principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391, believes it will be damaged by registration of DOGVITALITY as a trademark for “non-medicated additives for animal feed,” Application Ser. No. 79/069,571, by Vitality Innovation AS (hereinafter referred to as “Applicant”), and hereby opposes the same upon the following grounds.

1. Cargill is the owner of the registered trademark VITALITY. Since at least as early as 1919, and long prior to Applicant’s February 16, 2009 filing date of its Section 66A request for extension of protection under the Madrid Protocol, Cargill adopted and began using the mark VITALITY on or in connection with goods relating to animal feed and additives for animal feed, which are and have been continuously used and marketed in interstate commerce by Cargill.

2. On March 7, 2008, Cargill applied for the trademark VITALITY for use in connection with “horse feed.” On January 12, 2010, the United States Patent & Trademark

Office registered on the Principal Register and issued to Cargill Registration No. 3,735,669 for the mark VITALITY. Registration No. 3,735,669 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the VITALITY mark in commerce in connection with those goods. A copy of the TARR report for the registration is attached as Exhibit A.

3. Cargill also owns United States Registration No. 876,885 for the trademark VITALITY in connection with "vitamin and mineral preparations for livestock." Registration No. 876,885 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the VITALITY mark in commerce in connection with those goods. A copy of the TARR report for the registration is attached as Exhibit B.

4. Cargill has expended substantial amounts of money in marketing, advertising and promoting its VITALITY mark on or in connection with numerous goods and services relating to animal feed and additives for animal feed in the United States.

5. Cargill has enjoyed substantial sales of goods and services in the United States in connection with the use of the VITALITY mark.

6. By reason of the extensive marketing, advertising and promotion of goods and services in connection with the VITALITY mark and the high quality of those goods and services, these marks have extremely valuable goodwill that inures to the benefit of Cargill.

7. Applicant is a Norwegian company with a principal place of business Stavemsveien 2, N-3285, Larvik, Norway.

8. Applicant is seeking to obtain registration on the Principal Register of the mark DOGVITALITY, Application Serial No. 79/069,571, for use on or in connection with "non-medicated additives for animal feed."

9. There is no issue of priority concerning Application Ser. No. 79/069,571 because Cargill has used its VITALITY mark prior to Applicant's February 16, 2009 filing date of its Section 66A request for extension of protection under the Madrid Protocol.

10. Cargill enjoys substantial and exclusive goodwill and good reputation in connection with its VITALITY trademark. This goodwill and reputation will be harmed by the use and registration of the mark DOGVITALITY sought to be registered by Applicant.

11. Applicant's intended adoption and use of its DOGVITALITY mark has been with actual or constructive knowledge of Cargill's prior use of and registrations of its VITALITY marks.

12. Applicant's intended adoption and use of the DOGVITALITY trademark has been without Cargill's consent or permission.

13. The DOGVITALITY trademark for which Applicant seeks registration is confusingly similar in appearance, sound and connotation to Cargill's VITALITY mark. Applicant's mark includes the entirety of Cargill's VITALITY mark, plus the addition of the word "dog."

14. Applicant's DOGVITALITY mark so resembles Cargill's VITALITY trademark as to be likely, when applied to Applicant's goods, to cause confusion, mistake, or deception as to the source of origin of Applicant's goods by creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Cargill.

15. The goods for which Applicant seeks registration of the DOGVITALITY trademark, namely, "non-medicated additives for animal feed," are sufficiently related to the

goods and services marketed under Cargill's VITALITY mark to likely cause confusion among purchasers and potential purchasers of Applicant's goods.

16. The goods for which the Applicant seeks registration of the DOGVITALITY trademark are likely to be sold to or used by the same customers to whom Cargill sells its goods and services under the VITALITY mark. The goods of Cargill and Applicant will travel in the same channels of trade.

17. Applicant's DOGVITALITY mark is confusingly similar to Cargill's VITALITY mark, and use thereof by the Applicant on the goods specified in Application No. 79/069,571 is likely to cause confusion, mistake, or deception that Applicant's goods are those of Cargill or are otherwise endorsed, sponsored, or approved by Cargill, whereby Cargill will be damaged by registration of Applicant's DOGVITALITY mark on the Principal Register of the United States Patent and Trademark Office.

18. Granting a federal trademark registration to Applicant for its claimed DOGVITALITY mark as shown in Application Serial No. 79/069,571 would be contrary to 15 U.S.C. § 1052 (d) and would violate or diminish the prior and superior rights of Cargill in its VITALITY trademark, causing irreparable damage and injury to Cargill.

PRAYER FOR RELIEF

WHEREFORE, Cargill asks that its opposition to Application No. 79/069,571 be sustained and that the registration of the term DOGVITALITY set forth therein be refused. Please direct all correspondence to the attention of Allen W. Hinderaker:

Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
612-332-5300

Cargill hereby appoints Allen W. Hinderaker; William D. Schultz; Heather J. Kliebenstein; Christopher Schulte; Scott W. Johnston; and other attorneys of the Merchant & Gould P.C. law firm as attorneys with the full power to represent Cargill, to receive all correspondence related thereto and to represent it in all proceedings affecting the potential opposition of the mark.

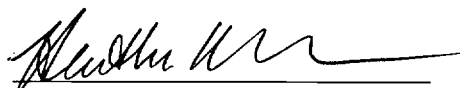
Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Cargill's counsel noted above.

Dated: August 27, 2010

Respectfully submitted,

CARGILL, INCORPORATED

By its attorneys,

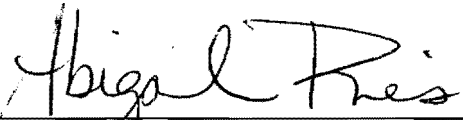


Allen W. Hinderaker
William D. Schultz
Heather Kliebenstein
Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant by Federal Express, postage pre-paid, this 27th day of August, 2010:

Vitality Innovation AS,
Stavemsveien 2, N-3285
Larvik
Norway



Abigail Ries

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-08-27 13:56:35 ET

Serial Number: 77415766 Assignment Information Trademark Document Retrieval

Registration Number: 3735669

Mark

VITALITY

(words only): VITALITY

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2010-01-12

Filing Date: 2008-03-07

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: No

Transformed into a National Application: No

Registration Date: 2010-01-12

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-01-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Cargill, Incorporated

EXHIBIT A
1 of 3

Address:

Cargill, Incorporated
15407 McGinty Road West
Wayzata, MN 55391
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

Phone Number: 952-742-6334

Fax Number: 952-404-6367

GOODS AND/OR SERVICES

International Class: 031

Class Status: Active

Horse feed

Basis: 1(a)

First Use Date: 1919-03-01

First Use in Commerce Date: 1919-03-01

ADDITIONAL INFORMATION

Prior Registration Number(s):

1066887

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-01-12 - Registered - Principal Register

2009-10-27 - Notice Of Publication E-Mailed

2009-10-27 - Published for opposition

2009-09-22 - Law Office Publication Review Completed

2009-09-18 - Approved for Pub - Principal Register (Initial exam)

2009-09-17 - Teas/Email Correspondence Entered

2009-09-17 - Communication received from applicant

2009-09-17 - TEAS Response To Suspension Inquiry Received

2009-06-10 - Report Completed Suspension Check Case Still Suspended

EXHIBIT A
2 of 3

2009-03-10 - Attorney Revoked And/Or Appointed
2009-03-10 - TEAS Revoke/Appoint Attorney Received
2008-12-10 - Notification Of Letter Of Suspension E-Mailed
2008-12-10 - LETTER OF SUSPENSION E-MAILED
2008-12-10 - Suspension Letter Written
2008-11-11 - Teas/Email Correspondence Entered
2008-11-10 - Communication received from applicant
2008-11-10 - TEAS Response to Office Action Received
2008-07-07 - Attorney Revoked And/Or Appointed
2008-07-07 - TEAS Revoke/Appoint Attorney Received
2008-05-09 - Combined Examiner's Amendment/Priority Action Entered
2008-05-09 - Assigned To LIE
2008-05-09 - Notification Of Examiner's Amendment/Priority Action E-Mailed
2008-05-09 - Examiner's Amendment/Priority Action E-Mailed
2008-05-09 - Examiners Amendment And/Or Priority Action - Completed
2008-05-09 - Removed From TEAS Plus
2008-05-08 - Assigned To Examiner
2008-03-12 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Ronald E. Hunter

Correspondent

RONALD E. HUNTER
CARGILL, INCORPORATED
LAW DEPARTMENT / MS24
PO BOX 5624
MINNEAPOLIS, MN 55440
Phone Number: 952-742-6334
Fax Number: 952-404-6367

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-08-27 13:57:25 ET

Serial Number: 72294263 Assignment Information Trademark Document Retrieval

Registration Number: 876885

Mark (words only): VITALITY

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2009-10-19

Filing Date: 1968-03-27

Transformed into a National Application: No

Registration Date: 1969-09-16

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: (NOT AVAILABLE)

Date In Location: 2009-10-19

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. CARGILL, INCORPORATED

Address:

CARGILL, INCORPORATED
15407 MCGINTY ROAD WEST
WAYZATA, MN 55391
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

U.S. Class: 018 (International Class 031)

Class Status: Active

VITAMIN AND MINERAL PREPARATIONS FOR LIVESTOCK

EXHIBIT B

1 of 2

Basis: 1(a)

First Use Date: 1968-03-03

First Use in Commerce Date: 1968-03-05

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-10-19 - Second renewal 10 year

2009-10-19 - Section 8 (10-year) accepted/ Section 9 granted

2009-10-16 - Case Assigned To Post Registration Paralegal

2009-09-18 - TEAS Section 8 & 9 Received

2009-02-04 - Automatic Update Of Assignment Of Ownership

2008-11-19 - Case File In TICRS

2008-11-05 - Automatic Update Of Assignment Of Ownership

1989-09-16 - First renewal

1989-08-14 - Section 9 filed/check record for Section 8

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Carrie L. Johnson

Correspondent

Carrie L. Johnson

Cargill, Incorporated

Law Department MS 24

PO Box 5624

Minneapolis MN 55440

Phone Number: 952-742-6334

Fax Number: 952-404-6367

EXHIBIT B

2 of 2