

ESTTA Tracking number: **ESTTA382261**

Filing date: **12/07/2010**

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 | 12/08/2010 |
| Address | 15407 McGinty Road West Wayzata, MN 55391 UNITED STATES |

| | |
|----------------------|--|
| Attorney information | Allen Hinderaker Merchant & Gould P.C. PO Box 2910 Minneapolis, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300 |
|----------------------|--|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 77965656 | Publication date | 08/10/2010 |
| Opposition Filing Date | 12/07/2010 | Opposition Period Ends | 12/08/2010 |
| Applicant | The Hitchin' Spot, LLC 2408 El Cortez Avenue Las Vegas, NV 89102 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| Class 005. All goods and services in the class are opposed, namely: Dietary supplements for pets |
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Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Marks Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|------------|-----------------------|------------|
| 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 |
|----------------|--|

| | | | |
|-----------------------|---|-----------------------|------------|
| 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 | | |

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|-------------|---|
| Attachments | 77415766#TMSN.jpeg (1 page)(bytes) 2010 12 07 Notice of Opposition_AV.pdf (13 pages)(1297612 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 | /William Schultz/ |
| Name | William Schultz |
| Date | 12/07/2010 |

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

| | | |
|-------------------------|---|-------------------------------|
| Cargill, Incorporated, |) | |
| |) | Opposition No. _____ |
| Opposer, |) | |
| |) | Mark: ANIMAL VITALITIE |
| v. |) | |
| |) | Application Ser. No. 77965656 |
| The Hitchin' Spot, LLC, |) | |
| |) | Filed: March 23, 2010 |
| Applicant. |) | |
| |) | Published: August 10, 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 ANIMAL VITALITIE as a trademark for “dietary supplements for pets,” Application Ser. No. 77-965,656, by The Hitchin' Spot, LLC (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 intent-to-use filing date of March 23, 2010, Cargill adopted and began using the mark VITALITY for use on or in connection with goods relating to animals and the feeding thereof, 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 animals and the feeding thereof 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 Nevada limited liability company with a principal place of business at 2408 El Cortez Avenue, Las Vegas, Nevada 89102.

8. Applicant is seeking to obtain registration on the Principal Register of the mark ANIMAL VITALITIE, Application Serial No. 77-965,656, for use on or in connection with "dietary supplements for pets."

9. There is no issue of priority concerning Application Ser. No. 77-965,656 because Cargill has use of its VITALITY mark prior to March 23, 2010, Applicant's filing date of its intent-to-use application.

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 ANIMAL VITALITIE sought to be registered by Applicant.

11. Applicant's intended adoption and use of its ANIMAL VITALITIE 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 ANIMAL VITALITIE trademark has been without Cargill's consent or permission.

13. The ANIMAL VITALITIE trademark for which Applicant seeks registration is confusingly similar in appearance, sound and connotation to Cargill's VITALITY mark. The "ANIMAL" portion of the mark was disclaimed.

14. Applicant's ANIMAL VITALITIE 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 ANIMAL VITALITIE trademark, namely, "dietary supplements for pets," 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 ANIMAL VITALITIE 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 ANIMAL VITALITIE mark is confusingly similar to Cargill's VITALITY mark and use thereof by the Applicant on the goods specified in Application No. 77-965,656 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 ANIMAL VITALITIE mark on the Principal Register of the United States Patent and Trademark Office.

18. Granting a federal trademark registration to Applicant for its claimed ANIMAL VITALITIE mark as shown in Application Serial No. 77-965,656 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. 77-965,656 be sustained and that the registration of the term ANIMAL VITALITIE 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; Christopher Schulte; Scott W. Johnston, Reg. No. 39,721; 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.

Respectfully submitted,

Dated: December 7, 2010

CARGILL, INCORPORATED

By its attorneys,




Allen W. Hinderaker
William D. Schultz
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 7th
day of December, 2010:

The Hitchin' Spot, LLC
2408 El Cortez Avenue
Las Vegas, NV 89102


Abigail Ries

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

This page was generated by the TARR system on 2010-12-07 09:12:23 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

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
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

CorrespondentRONALD E. HUNTER
CARGILL, INCORPORATED
LAW DEPARTMENT / MS24
PO BOX 5624

MINNEAPOLIS, MN 55440
Phone Number: 952-742-6334
Fax Number: 952-404-6367

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

This page was generated by the TARR system on 2010-12-07 09:11:24 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

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
