

ESTTA Tracking number: **ESTTA466119**

Filing date: **04/09/2012**

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 parties oppose registration of the indicated application.

Opposers Information

Name	USA Nutraceuticals Group, Inc
Granted to Date of previous extension	04/08/2012
Address	3100 N.W. 2nd Avenue Suite 213 Boca Raton, FL 33431 UNITED STATES

Name	Ultra-Lab Nutrition, Inc., d/b/a Beast Sports
Granted to Date of previous extension	04/08/2012
Address	3100 N.W. 2nd Avenue Suite 213 Boca Raton, FL 33431 UNITED STATES

Attorney information	Ryan M. Kaiser AMIN TALATI, LLC 225 N. Michigan Ave. Suite 700 Chicago, IL 60601 UNITED STATES ryan@amintalati.com
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Applicant Information

Application No	85365641	Publication date	10/11/2011
Opposition Filing Date	04/09/2012	Opposition Period Ends	04/08/2012
Applicant	MusclePharm Corporation 4721 Ironton Street Denver, CO 80239 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. First Use: 2008/07/31 First Use In Commerce: 2008/07/31
All goods and services in the class are opposed, namely: Dietary supplements for human consumption

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.	2012763	Application Date	03/23/1995
Registration Date	10/29/1996	Foreign Priority Date	NONE
Word Mark	THE BEAST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1996/04/01 First Use In Commerce: 1996/05/01 vitamins and nutritional food supplements		

U.S. Registration No.	3978998	Application Date	02/01/2010
Registration Date	06/14/2011	Foreign Priority Date	NONE
Word Mark	BEAST MODE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2010/02/01 First Use In Commerce: 2011/03/01 Dietary and nutritional supplements		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BEAST		
Goods/Services	Dietary and nutritional supplements.		

Related Proceedings	Opposition Nos. 91199986 and 91202947, and Civil Action No. 9:11-cv-80960 (S. D. Fl)
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Attachments	77925401#TMSN.jpeg (1 page)(bytes) Notice of Opp TRAIN LIKE AN UNCHAINED BEAST.pdf (6 pages)(49734 bytes) THE BEAST.pdf (3 pages)(53640 bytes) BEAST MODE.pdf (1 page)(25598 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	/Ryan M. Kaiser/
Name	Ryan M. Kaiser
Date	04/09/2012

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

USA NUTRACEUTICALS GROUP, INC.

and

ULTRA-LAB NUTRITION, INC., d/b/a
BEAST SPORTS,

Opposers,

v.

MUSCLEPHARM CORPORATION,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Appl. Serial No.: 85/365,641
Filing Date: July 7, 2011
Publication Date: October 11, 2011

USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports (collectively “Opposers” and “Beast Sports”) believe that they will be damaged by registration of the mark TRAIN LIKE AN UNCHAINED BEAST (“Applicant’s Mark”) for “Dietary supplements for human consumption” (IC 005) in Application Serial No. 85/365,641 (the “Application”). Accordingly, Beast Sports hereby opposes the Application. The grounds for this opposition are as follows:

Parties

1. Opposer USA Nutraceuticals Group, Inc. is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.
2. Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.

3. Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the parent of USA Nutraceuticals Group, Inc. USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports will collectively be referred to as “Opposers.”

4. On information and belief, Applicant MusclePharm Corporation is a Nevada corporation with its principal place of business located at 4721 Ironton Street, Building A, Denver, Colorado 80239. On information and belief, Applicant MusclePharm Corporation is the owner of the subject opposed Application Serial No. 85/365,641.

Opposed Application

5. On November 3, 2010, Applicant filed use-based application, Application Serial No. 85/365,641, to register TRAIN LIKE AN UNCHAINED BEAST for “Dietary supplements for human consumption” (IC 005).

Opposers’ Trademark Rights

6. Opposer USA Nutraceuticals Group, Inc. is the owner by assignment of U.S. Trademark Registration No. 2,012,763 for THE BEAST for “Vitamin and nutritional food supplements” (IC 005) (*attached*). Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the exclusive licensee of U.S. Trademark Registration No. 2,012,763. Opposers’ THE BEAST trademark registration is now incontestable.

7. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 3,978,998 for BEAST MODE for “Dietary and nutritional supplements” (IC 005) (*attached*).

8. Opposers own other valuable common law trademark rights to various marks incorporating the word “BEAST.” Opposer Ultra-Lab Nutrition, Inc. does business as “Beast Sports” and sometimes simply as “Beast.”

9. Opposers' above trademark rights are collectively referred to as Opposers' "BEAST Marks."

Other Allegations

10. Applicant's use and application to register the mark TRAIN LIKE AN UNCHAINED BEAST is without Opposers' consent.

11. Applicant has no basis for claiming rights in the TRAIN LIKE AN UNCHAINED BEAST mark, at least with respect to goods in International Class 005, prior to Opposers' first use and/or registration of the BEAST Marks. Opposers have used their BEAST Marks in commerce in at least one form at least as early as May 1st, 1996.

12. Opposers have not abandoned their BEAST Marks in connection with any of Opposers' goods or services.

13. Opposers' BEAST Marks and Applicant's Mark are highly similar—both make prominent use of the word "BEAST." Opposers use their BEAST Marks to market mainly nutritional supplements and related goods and services, primarily to professional and amateur bodybuilders and other sports-oriented users. Applicant's Mark includes "Dietary supplements for human consumption" in International Class 005. Because of the highly similar nature of the marks at issue and the highly similar nature of the relevant goods and services, Applicant's Mark so resembles Opposers' BEAST Marks as to be likely under Section 2(d) of the Trademark Act to create confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Applicant's goods and services, and suggest an affiliation or connection between Applicant's goods and services and Opposers' goods and services.

14. The registration of Applicant's Mark for nutritional supplements in International Class 005 would prevent Opposers from exercising exclusive control over the goodwill and

reputation associated with Opposers' BEAST Marks, and any defect, fault, or deficiency in Applicant's goods or services could negatively reflect on Opposers' BEAST Marks. Therefore, a grant of registration of Applicant's Mark would damage and injure Opposers.

15. Opposers will be further damaged by the registration of Applicant's Mark because the registration of Applicant's Mark will support statutory rights that may conflict or supersede Opposers' prior statutory and common law rights.

WHEREFORE, Opposers request that the mark in Application Serial No. 85/365,641 be denied registration with respect to nutritional supplements in International Class 005.

April 9, 2012

Respectfully submitted,

AMIN TALATI, LLC

By: /s/ Ryan M. Kaiser

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ATTORNEYS FOR USA NUTRACEUTICALS
GROUP, INC. AND ULTRA-LAB NUTRITION,
INC., d/b/a BEAST SPORTS

Certificate of Service

I hereby certify that on this 9^h day of April, 2012, the forgoing **Notice of Opposition** was served, by mailing same by US First Class mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

MARK CAMPANINI
401 N TRYON ST FL 10
CHARLOTTE, NC 28202-2101

/s/ Ryan M. Kaiser _____
Ryan M. Kaiser

CERTIFICATE OF TRANSMISSION

I, Ryan M. Kaiser, hereby certify that the forgoing **Notice of Opposition** is being electronically transmitted to the United States Patent and Trademark Office today, April 9, 2012.

Dated: April 9, 2012

/s/ Ryan M. Kaiser
Ryan M. Kaiser

Int. Cl.: 5

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

Reg. No. 2,012,763

United States Patent and Trademark Office Registered Oct. 29, 1996

**TRADEMARK
PRINCIPAL REGISTER**

THE BEAST

ULTRA-LAB NUTRITION, INC. (FLORIDA
CORPORATION)
350 CLUB CIRCLE, SUITE 205
BOCA RATON, FL 33487

FIRST USE 4-1-1996; IN COMMERCE
5-1-1996.

SN 74-650,530, FILED 3-23-1995.

FOR: VITAMINS AND NUTRITIONAL FOOD
SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44,
46, 51 AND 52).

JOYCE A. WARD, EXAMINING ATTORNEY

Int. Cl.: 5

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

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JOYCE A. WARD, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

BEAST MODE

Reg. No. 3,978,998

USA NUTRACEUTICALS GROUP, INC. (FLORIDA CORPORATION)

Registered June 14, 2011

3100 NW BOCA RATON BLVD. #213

BOCA RATON, FL 33431

Int. Cl.: 5

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

TRADEMARK

FIRST USE 2-1-2010; IN COMMERCE 3-1-2011.

PRINCIPAL REGISTER

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

SEC. 2(F).

OWNER OF U.S. REG. NO. 2,012,763.

SN 77-925,401, FILED 2-1-2010.

NORA BUCHANAN WILL, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office