

ESTTA Tracking number: **ESTTA477221**

Filing date: **06/11/2012**

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 party opposes registration of the indicated application.

Opposer Information

Name	Nutri/System IPHC, Inc.
Granted to Date of previous extension	06/09/2012
Address	1011 Centre Road, Suite 322 Wilmington, DE 19805 UNITED STATES

Attorney information	Timothy J. Szuhaj Becker Meisel LLC 220 Lake Drive East, Suite 102 Cherry Hill, NJ 08002 UNITED STATES tszuhaj@beckermeisel.com Phone:856-779-8700
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Applicant Information

Application No	85381057	Publication date	04/10/2012
Opposition Filing Date	06/11/2012	Opposition Period Ends	06/09/2012
Applicant	Alticor Inc. 7575 Fulton Street East Ada, MI 49355 UNITED STATES		

Goods/Services Affected by Opposition


Class 044. All goods and services in the class are opposed, namely: Weight management services, namely, providing weight loss and/or weight management programs including support materials, services rendered by a dietician, counseling, questionnaires and quizzes for self-evaluation, and providing advice and information in the field of weight management and nutrition; health care testing, namely, genetic testing, biomarker testing and lifestyle assessments in conjunction with weight management program; consulting services in the field of weight management and nutrition; providing information in the field of weight management and nutrition by means of a global computer network; providing an interactive website featuring information and links relating to healthy living and weight loss
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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.	1251922	Application Date	09/07/1982
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Registration Date	09/20/1983	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1979/07/00 First Use In Commerce: 1979/07/00 Conducting a Supervised Program for Weight Reduction and Control, Nutrition, and Exercise		

U.S. Registration No.	1429657	Application Date	06/30/1986
Registration Date	02/17/1987	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1985/06/00 First Use In Commerce: 1985/06/00 CONDUCTING A SUPERVISED PROGRAM FOR WEIGHT REDUCTION INCLUDING ACCELERATED WEIGHT REDUCTION AND CONTROL, NUTRITION AND EXERCISE		


U.S. Registration No.	3436912	Application Date	11/29/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM SILVER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2006/09/15 First Use In Commerce: 2006/09/15		


	PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION		
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U.S. Registration No.	3502439	Application Date	04/18/2007
Registration Date	09/16/2008	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM ADVANCED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2007/12/15 First Use In Commerce: 2007/12/15 Health care, namely, providing treatment and consultation for weight reduction, obesity and weight management, and nutrition through the telephone, television, global Internet and through the dissemination of literature and videotapes related thereto		

U.S. Registration No.	3709974	Application Date	08/04/2008
Registration Date	11/10/2009	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2008/09/27 First Use In Commerce: 2008/09/27 Weight management diet planning and supervision, namely, providing individuals with customized meal planning, exercise planning, NutriSystem weight loss/weight management counseling and behavior modification		

U.S. Registration No.	3710155	Application Date	09/26/2008
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Registration Date	11/10/2009	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM SELECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2008/12/28 First Use In Commerce: 2008/12/28 Health care, namely, providing treatment and consultation for weight reduction, obesity and weight management, and nutrition, through the telephone, television, global Internet and through the dissemination of literature and videotapes related thereto		

U.S. Registration No.	3741847	Application Date	01/26/2009
Registration Date	01/26/2010	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM FLEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2008/02/27 First Use In Commerce: 2008/02/27 HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION, THROUGH THE TELEPHONE, TELEVISION, GLOBAL INTERNET AND THROUGH THE DISSEMINATION OF LITERATURE AND VIDEOTAPES RELATED THERETO		

U.S. Registration No.	3895043	Application Date	09/22/2009
Registration Date	12/21/2010	Foreign Priority Date	NONE
Word Mark	NUTRISYSTEM MY WAY		

Design Mark	NUTRISYSTEM MY WAY
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2009/10/19 First Use In Commerce: 2009/10/19 HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION, THROUGH THE TELEPHONE, TELEVISION, GLOBAL INTERNET AND THROUGH THE DISSEMINATION OF LITERATURE AND VIDEOTAPES RELATED THERETO

Attachments	73383698#TMSN.jpeg (1 page)(bytes) 73606917#TMSN.gif (1 page)(bytes) 77053256#TMSN.jpeg (1 page)(bytes) 77159334#TMSN.jpeg (1 page)(bytes) 77538010#TMSN.jpeg (1 page)(bytes) 77579847#TMSN.jpeg (1 page)(bytes) 77656750#TMSN.jpeg (1 page)(bytes) 77831960#TMSN.jpeg (1 page)(bytes) Notice of Opposition NUTRILITE 85381057 v.2.pdf (8 pages)(28017 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	/Timothy J. Szuhaj/
Name	Timothy J. Szuhaj
Date	06/11/2012

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

NUTRI/SYSTEM IPHC, INC.)	
)	
Opposer,)	
)	
v.)	
)	Opposition No.:
)	Serial No. 85/381057
ALTICOR, INC.)	Mark: NUTRILITE
)	Filing Date: July 26, 2011
Applicant.)	Publication Date: April 10, 2012

**NOTICE OF
OPPOSITION**

Nutri/System IPHC, Inc., a Delaware corporation, located and doing business at 1011 Centre Road, Suite 322, Wilmington, DE 19805 (“Opposer”), will be damaged in the event that registration issues for NUTRILITE (Serial No. 85/381,057) in International Class 44 (which could only occur upon actual use in commerce that has not happened), filed by Alticor, Inc., a Michigan corporation (“Applicant”) on July 26, 2011, and hereby opposes Application Serial No. 85/381,057.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant’s filing date, Opposer, and Opposer’s predecessor in interest and licensee Nutrisystem, Inc., have engaged, and Opposer through its licensee is now engaged, in the provision, distribution, sale, advertising and promotion in interstate commerce of weight management services.

2. Commencing long prior to Applicant's filing date, Opposer, and Opposer’s predecessor in interest and licensee, have used, and Opposer through its licensee is now using, Opposer’s NUTRISYSTEM trademarks (“Opposer’s

Marks”) in connection with weight management services distributed and sold by Opposer’s licensee in commerce.

3. Opposer, is owner of, and will rely herein, upon the following Federal

Trademark Registrations:

MARK	Registration No.	Issue Date	Goods
NUTRISYSTEM	1,251,922	September 20, 1983	CONDUCTING A SUPERVISED PROGRAM FOR WEIGHT REDUCTION AND CONTROL, NUTRITION, AND EXERCISE.
NUTRISYSTEM	1,429,657	February 17, 1987	CONDUCTING A SUPERVISED PROGRAM FOR WEIGHT REDUCTION INCLUDING ACCELERATED WEIGHT REDUCTION AND CONTROL, NUTRITION AND EXERCISE.
NUTRISYSTEM SILVER	3,436,912	May 5, 2008	PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION
NUTRISYSTEM ADVANCED	3,502,439	September 16, 2008	HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT

			REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION THROUGH THE TELEPHONE, TELEVISION, GLOBAL INTERNET AND THROUGH THE DISSEMINATION OF LITERATURE AND VIDEOTAPES RELATED THERETO.
NUTRISYSTEM BALANCE	3,709,974	November 10, 2009	WEIGHT MANAGEMENT DIET PLANNING AND SUPERVISION, NAMELY, PROVIDING INDIVIDUALS WITH CUSTOMIZED MEAL PLANNING, EXERCISE PLANNING, NUTRISYSTEM WEIGHT LOSS/WEIGHT MANAGEMENT COUNSELING AND BEHAVIOR MODIFICATION.
NUTRISYSTEM SELECT	3,710,155	November 10, 2009	HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT

			MANAGEMENT, AND NUTRITION, THROUGH THE TELEPHONE, TELEVISION, GLOBAL INTERNET AND THROUGH THE DISSEMINATION OF LITERATURE AND VIDEOTAPES RELATED THERETO.
NUTRISYSTEM FLEX	3,741,847	January 26, 2010	HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT, AND NUTRITION, THROUGH THE TELEPHONE, TELEVISION, GLOBAL INTERNET AND THROUGH THE DISSEMINATION OF LITERATURE AND VIDEOTAPES RELATED THERETO
NUTRISYSTEM MY WAY	3,895,043	December 21, 2010	HEALTH CARE, NAMELY, PROVIDING TREATMENT AND CONSULTATION FOR WEIGHT REDUCTION, OBESITY AND WEIGHT MANAGEMENT,

AND NUTRITION,
THROUGH THE
TELEPHONE,
TELEVISION,
GLOBAL
INTERNET AND
THROUGH THE
DISSEMINATION
OF LITERATURE
AND VIDEOTAPES
RELATED
THERE TO

(“Opposer’s Registered Marks”). The registrations of Opposer’s Registered Marks are valid, subsisting and conclusive evidence of Opposer’s exclusive right to use Opposer’s Registered Marks in commerce on the goods specified in said registrations. Opposer shall rely herein upon its common law usage of Opposer’s other NUTRISYSTEM marks for other various promotional and licensed products and uses (“Opposer’s Common Law Marks”). Together, Opposer’s Marks, Opposer’s Registered Marks and Opposer’s Common Law Marks are hereafter referred to as Opposer’s “NUTRISYSTEM Marks.”

4. Opposer and its licensee have made substantial investment in advertising and promoting goods under Opposer’s NUTRISYSTEM Marks since their initial use. Opposer, through its licensee, has extensively used, advertised, promoted and offered Opposer’s weight management services bearing Opposer’s NUTRISYSTEM Marks to the public through various channels of trade in commerce with the result that the subject customers and the public in general have come to know and recognize Opposer’s NUTRISYSTEM Marks and associate the same with Opposer and/or goods sold by Opposer’s licensee.

5. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's NUTRISYSTEM Marks, on July 26, 2011, Applicant filed an intent to use application for registration of the proposed NUTRILITE Mark with the intention of using the same in association with "[w]eight management services, namely, providing weight loss and/or weight management programs including support materials, services rendered by a dietician, counseling, questionnaires and quizzes for self-evaluation, and providing advice and information in the field of weight management and nutrition; health care testing, namely genetic testing, biomarker testing and lifestyle assessments in conjunction with weight management program; consulting services in the field of weight management and nutrition; providing information in the field of weight management and nutrition by means of a global computer network; providing an interactive website featuring information and links relating to healthy living and weight loss" in International Class 44. Said application was assigned Serial No. 85/381,057.

6. Applicant's NUTRILITE Mark so resembles Opposer's NUTRISYSTEM Marks as to be likely to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation in event that use by Applicant begins.

7. In the event that use by Applicant begins, Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged NUTRILITE Mark and misled into believing that such goods emanate from, or are licensed to or are in some way directly or indirectly associated with Opposer, to the detriment of Opposer and its

reputation.

8. In the event that registration issues, Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged NUTRILITE Mark, as set forth in Applicant's Trademark Application Serial No. 85/381,057, in that the mark is substantially similar to Opposer's NUTRISYSTEM Marks, and may permit the same to be used in connection with the sale and advertising of food products that are either directly competitive with or closely related to Opposer's goods. In the event that such goods are directly competitive and/or closely related, consumers could easily infer that the alleged NUTRILITE Mark branded goods were either an extension of Opposer's goods or that Opposer had licensed Applicant's use of Opposer's famous brand.

Wherefore, the Opposer, Nutri/System IPHC, Inc., believes and avers that it will be damaged by registration of the proposed NUTRILITE Mark as aforesaid, and prays that said Application Serial No. 85/381,057 be rejected, that no registration be issued thereon to Applicant with respect to said application and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

NUTRI/SYSTEM IPHC, INC.

By: /Timothy J. Szuhaj/
Timothy J. Szuhaj
Becker Meisel LLC
220 Lake Drive East
Suite 102
Cherry Hill, NJ 08002

Date: June 11, 2012

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

NUTRI/SYSTEM IPHC, INC.)	
)	
Opposer,)	
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v.)	
)	Opposition No.:
)	Serial No. 85/381057
ALTICOR, INC.)	Mark: NUTRILITE
)	Filing Date: July 26, 2011
Applicant.)	Publication Date: April 10, 2012

**CERTIFICATE OF
SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following Attorney of Record and Correspondent listed on the TARR website of the United States Patent and Trademark Office by mailing said copy on June 11, 2012, via First Class Mail, postage prepaid to:

Sherry Gunderson-Schipper
Alticor Inc.
7575 Fulton St. E.
Ada, MI 49355-001

___/Timothy J. Szuhaj/_____
Timothy J. Szuhaj