

ESTTA Tracking number: **ESTTA600431**

Filing date: **04/24/2014**

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 | Cardio 3 Biosciences | | |
| Entity | Belgian Societe Anonyme | Citizenship | Belgium |
| Address | Rue Edouard Belin 12 Mont-Saint-Guibert, B-1435 BELGIUM | | |

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| Domestic Representative | Venus Griffith Trunnel Attorney at Law 9889 Estacia Court Rancho Cucamonga, CA 91730 UNITED STATES trademark.vgt@gmail.com Phone:310-930-2865 |
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Applicant Information

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|--------------------------------|---|---------------------------------|------------|
| Application No | 77797016 | Publication date | 03/25/2014 |
| Opposition Filing Date | 04/24/2014 | Opposition Period Ends | 04/24/2014 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | Natural Factors Nutritional Products Ltd. 1550 United Boulevard Coquitlam, BC, V3K6Y2 CANADA | | |

Goods/Services Affected by Opposition


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|---|
| Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary and nutritional supplements made with coenzyme Q10, fish oil, omega-3 fatty acids, essential fatty acids, grapeextract, pomegranate extract, strawberry extract, cranberry extract, blueberry extract, raspberry extract and bilberry extract, yellow beeswax and soy lecithin |
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Grounds for Opposition

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|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Mark Cited by Opposer as Basis for Opposition

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|-----------------------|----------------------|-----------------------|------------|
| U.S. Registration No. | 3864525 | Application Date | 11/05/2009 |
| Registration Date | 10/19/2010 | Foreign Priority Date | NONE |
| Word Mark | CARDIO 3 BIOSCIENCES | | |

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| Design Mark |  |
| Description of Mark | The mark consists of the wording "CARDIO 3 BIOSCIENCES", with an stylized molecular model with a heart at the center of the design. The wording "CARDIO 3" and the circle surrounding the heart are in red. The wording "BIOSCIENCES" and the three circles being part of the design are in grey. The heart is in white. The wording is found to the right of the design. |
| Goods/Services | Class 042. First use: First Use: 0 First Use In Commerce: 0 Scientific and technological services, namely, research and development in the field of cardiovascular disease |

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| Attachments | 79081303#TMSN.jpeg(bytes) Cardio3 (79081303) - Opposition.pdf(96420 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 | /Venus G. Trunnel/ |
| Name | Venus Griffith Trunnel |
| Date | 04/24/2014 |

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

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| |) | |
| |) | |
| In the matter of Application of: Natural Factors |) | Opposition No. |
| Nutritional Products, Ltd. |) | |
| Serial No.: 77/797,016 |) | |
| Filed: August 4, 2009 |) | |
| Mark: CARDIO3 Q10 |) | |
| Int'l Class: 005 |) | |
| |) | |
| |) | |
| |) | |
| <i>Published in the Official Gazette on March 25,</i> |) | |
| <i>2014</i> |) | |
| |) | |

NOTICE OF OPPOSITION

Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

CARDIO 3 BIOSCIENCES, a Belgian Société Anonyme, residing at Axisparc Business Center, Rue Edouard Belin 12 B-1435 MONT-SAINT-GUIBERT, Belgium (“Opposer”), believes that it will be damaged by the registration of the mark CARDIO3 Q10 in International Class 5, Application Serial No. 77/797,016 (“Application”) owned by Natural Factors Nutritional Products, Ltd., a Canadian Corporation, with offices at 1550 United Boulevard Coquitlam, BC Canada V3K6Y2, (“Applicant”) and therefore oppose the same.

As grounds for opposition, it is alleged:

1. By the Application filed on August 4, 2009, Applicant seeks to obtain registration on the Principal Register of the trademark CARDIO3 Q10 for “Dietary and

nutritional supplements made with coenzyme Q10, fish oil, omega-3 fatty acids, essential fatty acids, grape extract, pomegranate extract, strawberry extract, cranberry extract, blueberry extract, raspberry extract and bilberry extract, yellow beeswax and soy lecithin” in International Class 5.

2. Opposer owns and relies on U.S. Trademark Registration No. 3,864,525 (“Registration”) for the mark CARDIO 3 BIOSCIENCE for “Scientific and technological services, namely, research and development in the field of cardiovascular disease” in International Class 42, which registration issued October 19, 2010 and is based on an application filed in the United States Patent and Trademark Office (“USPTO”) on November 5, 2009. The priority date of the Registration is prior to the filing date of the subject Application.

3. Opposer has used the mark CARDIO 3 BIOSCIENCES, since at least 2009, in U.S. commerce, and has a priority date of May 20, 2009 based on its International Registration No. 1035355. Applicant’s priority date of August 4, 2009 and filing date for its intent-to-use application is after Opposer’s priority date. Accordingly, Opposer’s rights are superior to those of Applicant.

4. The mark CARDIO3 Q10 is similar to Opposer’s mark CARDIO 3 BIOSCIENCES, in sight, sound and commercial impression. Both marks are comprised of the identical beginning work “CARDIO” and are both followed by the number “3.” These marks are highly similar, and when used in connection with closely related goods and services listed above and as used in the marketplace, there is a high likelihood of confusion.

5. The goods and services identified above for each party all relate to medical sciences and the development of drugs and supplements in the field of cardiovascular disease. Applicant's website promotes extensive research and development services in connection with the dietary supplements and products it offers.

6. Thus, a consumer looking to choose Opposer's CARDIO 3 BIOSCIENCES services related to cardiovascular disease would certainly be confused by Applicant's highly similar mark CARDIO3 Q10 for closely related goods and services. Such consumer may mistakenly believe both goods and services emanate from the same source, causing damage to Opposer's reputation, and resulting in loss of sales and goodwill for Opposer.

7. Opposer will be damaged by registration of the Application in that the CARDIO3 Q10 mark so resembles Opposer's CARDIO 3 BIOSCIENCES mark registered in the USPTO, and in which Opposer owns common law trademark rights, as to be likely, when used on or in connection with the goods as they are identified in the Application, as to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

8. In view of Opposer's prior rights in its CARDIO 3 BIOSCIENCES mark, Applicant is not entitled to federal registration of the CARDIO3 Q10 mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 77/797,016 be rejected and stricken, that no registration be issued thereon to Applicant,

and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Venus Griffith Trunnel", with a long horizontal flourish extending to the right.

Dated: April 24, 2014

Venus Griffith Trunnel,
Attorney at Law
9889 Estacia Court
Rancho Cucamonga, CA 91730
(310) 930-2865
trademark.vgt@gmail.com

Attorney for Opposer

CERTIFICATE OF TRANSMISSION

I, Venus Griffith Trunnel, hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via ESTTA on April 24, 2014.

/Venus Griffith Trunnel/

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been properly served, via first class mail, postage prepaid, on the following correspondent for Opposer on this 24th day of April, 2014.

Rong Zhang
NATURAL FACTORS NUTRITIONAL PRODUCTS, LTD.
1550 United Boulevard
Coquitlam, BC V3K6Y2
CANADA
(604)777-4702

/Venus Griffith Trunnel/