

ESTTA Tracking number: **ESTTA685701**

Filing date: **07/24/2015**

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	NESTLE SKIN CARE COMPANY AG
Granted to Date of previous extension	08/15/2015
Address	FROSCHACKERSTRASSE 6 EGERKINGEN, 4622 SWITZERLAND
Domestic Representative	G MATHEW LOMBARD Attorney for Opposer LOMBARD & GELIEBTER LLP 305 BROADWAY 7 FL NEW YORK, NY 10007 UNITED STATES mlombard@LombardIP.com Phone:9177799967

Applicant Information

Application No	86336621	Publication date	06/16/2015
Opposition Filing Date	07/24/2015	Opposition Period Ends	08/15/2015
Applicant	Natralus Australia Pty Ltd P.O. Box 1665 Mount Barker SA 5251, AUSTRALIA		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Non-medicated skin care preparations; non-medicated skin care preparations for the protection and prevention of skin damage from harmful substances, irritants, acids, oils and abrasives; non-medicated protective skin barrier creams and skin moisturizers; non-medicated skin care preparations, namely, barrier preparations for the skin; hand lotions; night creams; non-medicated foot creams; non-medicated foot creams, namely, cracked or rough heel creams; skin conditioners; massage oils; anti-aging creams; anti-wrinkle creams; nail care preparations; nail care preparations, namely, non-medicated nail and cuticle creams; cosmetics; cosmetic preparations; cosmetic creams, lotions and moisturizers; cosmetics in the form of creams; cosmetics in the form of gels; skin and body topical lotions, creams and oils for cosmetic use; preparations for removing cosmetics, namely, make-up removing preparations; tissues impregnated with cosmetic lotions; pre-moistened cosmetic tissues; cosmetic tanning preparations; bleaching preparations for cosmetic purposes; sun-tanning preparations; sunscreen preparations; sun block preparations; non-medicated lip protectors; after sun lotions and moisturizers; non-medicated ointments for the prevention and treatment of sunburn; perfumery; aromatic oils; essential oils; perfumes; scented room sprays; air fragrancing preparations; non-medicated toiletries; deodorants and antiperspirants; deodorizers for personal use; body sprays; anti-smear agents for cleaning purposes in the nature of non-

streaking cleaners for vinyl, plastics, acrylics, mirrors and glass; cleansing preparations in the nature of facial and skin cleansers for use with depilatory preparations; cleansing products for removing make-up, namely, facial cleansers, skin cleansers, foam cleansers for personal use, and wipes impregnated with a skin cleanser; non-medicated cleansing creams; non-medicated skin cleansing preparations; exfoliant creams; exfoliants for skin; cleaning agents and preparations; carpet cleaning preparations; cleaning preparations for furniture; anti-static preparations for household purposes; washing preparations and laundry bleach; shoe sprays in the nature of foot deodorant sprays that may be applied to shoes; bathroom cleaning preparations; household cleaning preparations; laundry preparations, namely, laundry bleach, laundry detergent and laundry fabric softener; cleaning preparations containing bactericides; natural oils for cleaning purposes; degreasers containing citrus oil, for household purposes; stain removers; spot removers; solvent cleaners for household use; body scrubs; detergents for household use; wipes impregnated with cleaning or polishing preparations; soaps for household use, personal use, and body care; disinfectant soaps; shampoos; hair conditioners; hair care preparations; non-medicated preparations for the care of hair and scalp; baby oil; non-medicated baby care products, namely, baby powder, baby wipes, baby shampoo, baby hair conditioners, and baby massage oils; non-medicated, non-veterinary deodorants, shampoos, cosmetics and grooming preparations for pets; pedicure preparations, namely, nail buffing preparations, nail care kits comprising nail polish, nail polish removers, nail primer, nail polish top coat, foot scrubs, non-medicated foot soaks; non-medicated foot care preparations; non-medicated hand care preparations; non-medicated lip ointments; lip balms; non-medicated skin ointments and skin balms; hand scrubs; scrubs, other than for medical use, namely, facial scrubs, foot scrubs and body scrubs; non-medicated facial skin care preparations, namely, face creams, face oils, face milk and lotions, face powder and facial cleansers; cosmetic preparations for eye and skin care; eye creams

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Dandruff treatments in the form of shampoos, namely, dandruff shampoos; therapeutic skin care preparations in the nature of medicated and non-medicated therapeutic skin creams for the treatment of skin-related diseases and conditions; dermatological skin care preparations; medicated after-sun lotions and moisturizers; pharmaceutical sun block preparations; medicated sunscreen and sun block preparations; medicated hair, nail, hand and skin care preparations; medicated body creams for cosmetic use; medicated cleaning preparations for cleaning the hands and face; medicated protective skin barrier creams and moisturizers; medicated sunscreen preparations; medicated facial skin care preparations, namely, face creams, face oils, face milk and lotions, face powder and facial cleansers; pharmaceutical preparations containing essential oils; medicated lip ointments and lip balms

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1013963	Application Date	10/21/1974
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	NUTRAPLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1974/10/03 First Use In Commerce: 1974/10/03 SKIN EMOLLIENT		

Attachments	20150724_0677_1020959.pdf(356994 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	/g mathew lombard/
Name	G MATHEW LOMBARD
Date	07/24/2015

**IN THE U.S. PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

In the matter of Application Serial No. 86336621
Published in the *Official Gazette* of June 16, 2015

Att'y Ref.: 102.0959

NESTLÉ SKIN CARE COMPANY AG,

Opposer,

v.

NATRALUS AUSTRALIA PTY LTD.,

Applicant.

Opposition No. _____

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attn: **BOX TTAB FEE**

NOTICE OF OPPOSITION

NESTLÉ SKIN CARE COMPANY AG, a Swiss aktiengesellschaft, with a business address of Froschackerstrasse 6, Egerkingen, Switzerland 4622 (hereinafter “Opposer”), believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 86336621, filed July 14, 2014, by **NATRALUS AUSTRALIA PTY LTD.**, (hereinafter “Applicant”) and, hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer, Nestlé Skin Care Company, individually and through its related companies, is a leading global pharmaceutical company and is in the business of researching, manufacturing and selling high-quality pharmaceutical products at the interstate and international levels.

2. Opposer operates, *inter alia*, in the dermatology field.
3. On information and belief, Applicant is an Australian proprietary limited company, having an business address of P.O. Box 1665, Mount Barker, SA 5251 Australia.
4. Opposer is the owner of U.S. Registration No. 1013963 covering the mark **NUTRAPLUS** for a *skin emollient* in Class 3. The application which resulted in the issuance of Reg. No. 1013963, Application Serial No. 73035045, was filed on October 21, 1974 based on § 1(a) use in commerce since at least as early as October 3, 1974.
5. Opposer acquired all right, title and interest to Application Serial No. 73035045, Registration No. 1013963, the trademark **NUTRAPLUS** and all common law rights and goodwill appertaining thereto as of February 6, 2015, recorded at Reel/Frame No. 5459/0614 on February 13, 2015.
6. Registration No. 1013963 issued on June 24, 1975.
7. Opposer, directly, through related companies or through authorized licensees, sells products bearing its **NUTRAPLUS** mark in interstate and international commerce.
8. Opposer, directly, through related companies or through authorized licensees, sells skin emollients bearing its **NUTRAPLUS** mark in interstate and international commerce.
9. Opposer, directly, through related companies or through authorized licensees, sells products in interstate and international commerce that compete directly with Applicant's Class 3 and Class 5 products identified in Application Serial No. 86336621.
10. On July 14, 2014, Applicant filed a § 1(b) intent-to-use application in the

United States Patent and Trademark Office, Serial No. 86336621, for registration on the
Principal Register of the trademark **NATRALUS** for

non-medicated skin care preparations; non-medicated skin care preparations for the protection and prevention of skin damage from harmful substances, irritants, acids, oils and abrasives; non-medicated protective skin barrier creams and skin moisturizers; non-medicated skin care preparations, namely, barrier preparations for the skin; hand lotions; night creams; non-medicated foot creams; non-medicated foot creams, namely, cracked or rough heel creams; skin conditioners; massage oils; anti-aging creams; anti-wrinkle creams; nail care preparations; nail care preparations, namely, non-medicated nail and cuticle creams; cosmetics; cosmetic preparations; cosmetic creams, lotions and moisturizers; cosmetics in the form of creams; cosmetics in the form of gels; skin and body topical lotions, creams and oils for cosmetic use; preparations for removing cosmetics, namely, make-up removing preparations; tissues impregnated with cosmetic lotions; pre-moistened cosmetic tissues; cosmetic tanning preparations; bleaching preparations for cosmetic purposes; sun-tanning preparations; sunscreen preparations; sun block preparations; non-medicated lip protectors; after sun lotions and moisturizers; non-medicated ointments for the prevention and treatment of sunburn; perfumery; aromatic oils; essential oils; perfumes; scented room sprays; air fragrancing preparations; non-medicated toiletries; deodorants and antiperspirants; deodorizers for personal use; body sprays; anti-smear agents for cleaning purposes in the nature of non-streaking cleaners for vinyl, plastics, acrylics, mirrors and glass; cleansing preparations in the nature of facial and skin cleansers for use with depilatory preparations; cleansing products for removing make-up, namely, facial cleansers, skin cleansers, foam cleansers for personal use, and wipes impregnated with a skin cleanser; non-medicated cleansing creams; non-medicated skin cleansing preparations; exfoliant creams; exfoliants for skin. cleaning agents and preparations; carpet cleaning preparations; cleaning preparations for furniture; anti-static preparations for household purposes; washing preparations and laundry bleach; shoe sprays in the nature of foot deodorant sprays that may be applied to shoes; bathroom cleaning preparations; household cleaning preparations; laundry preparations, namely, laundry bleach, laundry detergent and laundry fabric softener; cleaning preparations containing bactericides; natural oils for cleaning purposes; degreasers containing citrus oil, for household purposes; stain removers; spot removers; solvent cleaners for household use; body scrubs; detergents for household use; wipes

impregnated with cleaning or polishing preparations; soaps for household use, personal use, and body care; disinfectant soaps; shampoos; hair conditioners; hair care preparations; non-medicated preparations for the care of hair and scalp; baby oil; non-medicated baby care products, namely, baby powder, baby wipes, baby shampoo, baby hair conditioners, and baby massage oils; non-medicated, non-veterinary deodorants, shampoos, cosmetics and grooming preparations for pets; pedicure preparations, namely, nail buffing preparations, nail care kits comprising nail polish, nail polish removers, nail primer, nail polish top coat, foot scrubs, non-medicated foot soaks; non-medicated foot care preparations; non-medicated hand care preparations; non-medicated lip ointments; lip balms; non-medicated skin ointments and skin balms; hand scrubs; scrubs, other than for medical use, namely, facial scrubs, foot scrubs and body scrubs; non-medicated facial skin care preparations, namely, face creams, face oils, face milk and lotions, face powder and facial cleansers; cosmetic preparations for eye and skin care; eye creams in International Class 3; and

dandruff treatments in the form of shampoos, namely, dandruff shampoos; therapeutic skin care preparations in the nature of medicated and non-medicated therapeutic skin creams for the treatment of skin-related diseases and conditions; dermatological skin care preparations; medicated after-sun lotions and moisturizers; pharmaceutical sun block preparations; medicated sunscreen and sun block preparations; medicated hair, nail, hand and skin care preparations; medicated body creams for cosmetic use; medicated cleaning preparations for cleaning the hands and face; medicated protective skin barrier creams and moisturizers; medicated sunscreen preparations; medicated facial skin care preparations, namely, face creams, face oils, face milk and lotions, face powder and facial cleansers; pharmaceutical preparations containing essential oils; medicated lip ointments and lip balms in Class 5.

11. On information and belief, Applicant has not – and has never – used its alleged **NATRALUS** mark in the United States as required by the Lanham Act for any product(s) or service(s) prior to July 14, 2014.

12. There is no issue of priority since the filing date of Applicant's aforementioned trademark application is subsequent to both the actual filing date of Opposer's aforementioned registrations and application, subsequent to Opposer's date

of first use, and Applicant has made no priority claim.

13. On information and belief, Applicant did not use its alleged trademark **NATRALUS** anywhere in the United States, or in commerce, prior to the above-mentioned filing date(s).

14. There exists market interface between Opposer and Applicant; on information and belief, Opposer and Applicant both offer identical goods.

15. There exists market interface between Opposer and Applicant; on information and belief, Opposer and Applicant both offer substantially identical goods.

16. There exists market interface between Opposer and Applicant; on information and belief, Opposer and Applicant both offer similar goods.

17. There exists market interface between Opposer and Applicant; on information and belief, Opposer and Applicant both offer related goods.

18. Opposer markets and sells dermatological products.

19. Applicant markets and sells dermatological products.

20. Based on the above allegation(s), there is significant market overlap and interface between Opposer and Applicant.

21. Because neither Opposer's registration nor Applicant's application contains any restriction to the goods or channels of trade, the respective channels of trade are presumed to be identical.

22. Applicant's alleged trademark is so similar to Opposer's registered trademark in sound, appearance and/or commercial impression so as to be likely to cause confusion, mistake or deception.

23. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 3 are identical, similar and/or closely related.

24. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 5 are identical, similar and/or closely related.

25. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 3 would target the same class of purchasers.

26. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 5 would target the same class of purchasers.

27. Applicant's appropriation of Opposer's mark for Class 3 and Class 5 goods would cause confusion, mistake or deception among the relevant consumers.

28. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 3 are closely related and would be sold and/or promoted through the same channels of trade to the same class(es) of purchasers and users.

29. Opposer's pleaded goods in Class 3 and Applicant's goods in Class 5 are closely related and would be sold and/or promoted through the same channels of trade to the same class(es) of purchasers and users.

30. Applicant's alleged trademark is likely to cause confusion, mistake or deception of purchasers as to the respective marks, and also as to the source of origin or sponsorship of the goods for which such marks are used.

31. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and damage to Opposer's business and to the goodwill appertaining thereto.

32. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademark and the concurrent use of the marks would be likely to cause confusion, mistake or deception.

33. Opposer's **NUTRAPLUS** mark is distinctive and represents an extremely valuable asset of its business.

34. The use and registration by Applicant of its mark for the applied-for goods is likely to create the erroneous impression that Applicant's goods originate with, are sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer's goods provided under the **NUTRAPLUS** mark or that Applicant's goods are endorsed, sponsored, or in some way connected with Opposer.

35. Any use of Applicant's marks by the Applicant is, therefore, likely to cause confusion, cause mistake or to deceive the public into the belief that the products offered under Applicant's mark come from or are otherwise authorized or sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

36. Applicant selected, adopted and applied to register its alleged trademark without consent of Opposer.

37. Accordingly, any registration of the mark **NATRALUS** would cause harm to Opposer.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 86336621 be **DENIED**.

Respectfully submitted,

NESTLÉ SKIN CARE COMPANY AG

Dated: July 24, 2015

By: 

G. Mathew Lombard

Darren M. Geliebter

LOMBARD & GELIEBTER LLP

305 Broadway

7th Floor

New York, New York 10007


917.779.9967

Attorneys for Opposer

CERTIFICATE OF SERVICE

I, G. Mathew Lombard, hereby certify that on this 24th day of July 2015, a true and correct copy of Applicant's NOTICE OF OPPOSITION was served *via* U.S. First Class Mail, postage prepaid, upon counsel for Applicant at:

Robert B. Burlingame, Esq.
PILLSBURY WINTHROP SHAW PITTMAN LLP
PO Box 2824
San Francisco, California 94126-2824


G. Mathew Lombard