

ESTTA Tracking number: **ESTTA759605**

Filing date: **07/20/2016**

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	Vitalyze, Inc.
Granted to Date of previous extension	07/20/2016
Address	5415 E. High Street Phoenix, AZ 85256 UNITED STATES
Party who filed Extension of time to oppose	Vitalyze Me LLC
Relationship to party who filed Extension of time to oppose	Vitalyze Me LLC went through a corporate reorganization in which 72% of ownership interest was transferred to Vitalyze, Inc.

Correspondence information	Robert Lauson, Esq. Lauson & Tarver LLP 880 Apollo Street, #301 El Segundo, CA 90245 UNITED STATES bob@lauson.com Phone:310-726-0892
----------------------------	---

Applicant Information

Application No	86564680	Publication date	03/22/2016
Opposition Filing Date	07/20/2016	Opposition Period Ends	07/20/2016
Applicant	Vytalize LLC 25 Broadway New York, NY 10004 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2015/02/25 First Use In Commerce: 2015/02/25 All goods and services in the class are opposed, namely: Downloadable software in the nature of a mobile application for requesting and scheduling on demand medical services to be provided at the patient's location
Class 042. First Use: 2015/06/14 First Use In Commerce: 2015/06/14 All goods and services in the class are opposed, namely: Providing a website that gives computer-users the ability to request and schedule on demand medical services to be provided at the patient's location

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	87110966	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services			

Attachments	VitalyzeNoticeOfOpposition.pdf(109577 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	/robert lauson/
Name	Robert Lauson, Esq.
Date	07/20/2016

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

Vitalyze, Inc., a Delaware Corporation,

Opposer,

vs.

Vytalize LLC, a New York Limited Liability
Company,

Applicant.

Opposition No. _____

Mark: VYTALIZ

Serial No.: 86/564,680

Publication Date: March 22, 2016

NOTICE OF OPPOSITION

1. Opposer Vitalyze, Inc., a Delaware Corporation with an address of 5415 E. High Street, Phoenix, Arizona 85256.
2. Opposer believes it will be damaged by the registration of the mark shown in the above-identified application and hereby opposes the same.
3. Opposer has engaged in providing a website and software for subscribing to a health and wellness program, answering questionnaires and inputting health information and evaluating same, arranging conferences with medical personnel, receiving lab test results and progress tracking, and having pharmaceuticals and supplements available for purchase under the VITALYZE.ME mark since at least as early as October 1, 2014.
4. Opposer is the owner of pending U.S. application serial no. 87/110,966 VITALYZE, filed July 20, 2016.

5. Opposer pre-dates Applicant's first use, alleged to be February 25, 2015, such that Opposer has priority over Applicant.
6. Opposer has advertized, promoted and sold its services under the VITALYZE.ME mark, such that it is associated with the Opposer.
7. Applicant's mark VITALIZ is substantially similar to Opposer's mark, which may cause injury to Opposer and Opposer's rights in the VITALYZE.ME mark.
8. Opposer requested and was granted a ninety day extension-of-time to oppose, and as such this notice was timely filed.

Count I

False Suggestion of Connection

Lanham Act Sec. 2(a)

9. Opposer repeats and re-alleges the allegations set forth in paragraphs 1 through 8 as though set forth herein.
10. Consumers familiar with the Opposer's services may mistakenly believe that the Applicant's services are somehow sponsored by, authorized, endorsed, affiliated with or otherwise approved by the Opposer.

Count II

Likelihood of Confusion

Lanham Act Sec. 2(d)

11. Opposer repeats and re-alleges the allegations set forth in paragraphs 1 through 10 as though set forth herein.

12. Applicant's proposed VITALIZ mark may create confusion, mistake or deception in the minds of appreciable numbers of prospective purchasers as to the origin or source of Opposer's services.

WHEREFORE, for all the foregoing reasons, Opposer prays that this opposition be sustained and the above-referenced application be rejected.

The amount of \$600, representing the filing fee for two classes, is submitted herewith opposition. Please charge any deficiency or credit any overpayment to Deposit Account 50-3116.

Respectfully submitted,

LAUSON & TARVER, LLP

Dated: July 20, 2016

/s/ Robert Lawson
Robert J. Lawson, Esq.
880 Apollo St., Suite 301
El Segundo, CA 90245
Tel.: (310) 726-0892
Email: bob@lauson.com

Attorney for Opposer
Vitalyze, Inc.

cc: Hien Nguyen

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED
ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

LAUSON & TARVER, LLP

By: /Robert Lauson/

Date: July 20, 2016

CERTIFICATE OF SERVICE

I, Robert Lauson, hereby certify that I caused a true and correct copy of the foregoing
Notice of Opposition to be filed electronically with the TTAB and served upon Applicant via its
correspondent of record:

KELLY M WEINER
LAW OFFICE OF KELLY WEINER PLLC
175 Varick Street, Suite 661
NEW YORK, NEW YORK UNITED STATES 10014
kweiner@kellyweinerlaw.com

Via US Mail, postage pre-paid and email. Said service having taken place this 20th day of July,
2016.

By: /Robert Lauson/