

ESTTA Tracking number: **ESTTA762623**

Filing date: **08/04/2016**

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	Societe des Produits Nestle S.A.
Granted to Date of previous extension	08/07/2016
Address	Case Postale 353 Vevey, 1800 SWITZERLAND

Attorney information	Nadya C. Davis Holland & Hart LLP P.O. Box 8749 __Attn: Trademark Docketing Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, ncdavis@hollandhart.com, mlwitte@hollandhart.com, mamooore@hollandhart.com
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**Applicant Information**

Application No	86779473	Publication date	02/09/2016
Opposition Filing Date	08/04/2016	Opposition Period Ends	08/07/2016
Applicant	L. Perrigo Company 515 Eastern Avenue Allegan, MI 49010 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary supplements
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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.	4235971	Application Date	03/04/2011
Registration Date	11/06/2012	Foreign Priority Date	NONE
Word Mark	VITAFLO		

Design Mark	<h1>VITAFLO</h1>
Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0</p> <p>Foods for invalids and infants for medical purposes, namely, medicinal food supplements for nutritional purposes; nutritional supplements for medical use; dietary food preparations, namely, dietary and nutritionally fortified food products adapted for medical use; dietary food supplements for medical use; dietary foods adapted for medical use, dietary substances, namely, dietary drinks, dietary drink mixes, and dietary drink gels for use as a meal replacement for infants and invalids; dietetic beverages adapted for medical purposes; medicated supplements for fortifying foodstuffs adapted for medical purposes for persons with special dietary requirements; health food supplements for persons with special dietary requirements; invalids' foods, namely, dietetic foods adapted for medical purposes for persons with special dietary requirements due to a medical condition; medicated foodstuffs, namely, medicated supplements for foodstuffs for persons with special dietary needs due to a medical condition; mineral dietary supplements for humans; protein foods for dietetic purposes, namely, protein reduced food for medical purposes for persons with a disorder of the digestive system; protein substitutes, namely, amino acid based nutritional supplements in powder, liquid and gel form for medical use for the management of metabolic disorders, including, phenylketonuria, maple syrup urine disease and tyrosinemia; fortifying compositions, namely, dietary and nutritionally fortified food products adapted for medical use for the management of malnutrition</p>

U.S. Registration No.	4105761	Application Date	06/23/2007
Registration Date	02/28/2012	Foreign Priority Date	NONE
Word Mark	VITAFLO		

Design Mark	
Description of Mark	<p>The mark consists of a blue globe over whose central right portion appears the word "VITAFLO" in white stylized letters. There is a white dot over the letter "V". The color blue appears in the globe. The color white appears in the word "VITAFLO" and in the dot over the letter "V".</p>
Goods/Services	<p>Class 005. First use: First Use: 2007/02/28 First Use In Commerce: 2007/02/28  Foods for invalids and infants for special medical purposes, namely, food for invalids and infants with medically restricted diets; food supplements in the nature of medicinal food supplements for nutritional purposes; nutritional supplements for medical use; processed food adapted for medical purposes; dietary food supplements for medical use; dietary foodproducts adapted for medical use; dietary food substances adapted for medical use for infants and invalids; dietetic non-alcoholic beverages adapted for medical purposes; nutritionally fortified food-products adapted for medical use for persons with special dietary requirements; health food supplements for persons with special dietary requirements; food for medically restricted diets, namely, invalids' foods for persons with special dietary requirements due to a medical condition; medicated foodstuffs, namely, essential and non-essential amino acids, carbohydrate, vitamins, minerals and trace elements for persons with special dietary need due to a medical condition; mineral dietary supplements for humans; processed food adapted for medical purposes, namely, foods that are protein enhanced for dietetic purposes as well as low protein foods that are protein reduced for dietetic purposes for persons with a disorder of the digestive system; protein substitutes, namely, beverages, powder formulae and food products adapted for medical use for the management of metabolic disorders, including Phenylketonuria, Maple Syrup Urine Disease, and Tyrsinaemia; nutritionally fortified protein substitutes, namely, beverages, powder formulae and food products adapted for medical purposes for medical use</p>
Attachments	<p>85258529#TMSN.png( bytes )  77213819#TMSN.png( bytes )  Notice of Opposition - VITAFLAV.pdf(18662 bytes )</p>

## 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	/Nadya C. Davis/
Name	Nadya C. Davis
Date	08/04/2016



4. As a result of Opposer's licensees' extensive marketing and promotion of medical foods and related products under the VITAFLO mark, coupled with the commercial success of these products, Opposer's VITAFLO mark has become well known.

5. Opposer owns the following United States Trademark Registrations:

Trademark	Filing Date	Reg No. Reg Date.	Goods
VITAFLO	March 4, 2011	4235971 Nov. 6, 2012	Dietary food supplements for medical use, among other similar and related goods in International Class 5
	June 23, 2007	4105761 Feb. 28, 2012	Dietary food supplements for medical use, among other similar and related goods in International Class 5

6. These registrations are valid and subsisting, constituting *prima facie* evidence of the validity of the marks and registrations, and of Nestlé's ownership of and exclusive right to use the marks in connection with the goods set forth in the registrations.

7. These registrations also provide constructive notice of Opposer's ownership of its VITAFLO marks.

**COUNT I**  
**Likelihood of Confusion**  
**(15 U.S.C. § 1052(d))**

8. Nestlé realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

9. The VITAFLAV mark set forth in the Application so closely resembles Nestlé's prior used and registered VITAFLO marks as to be likely, when used in connection with the goods set forth in the Application, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in the Application and respectfully requests that the opposition be sustained and that registration to Applicant be refused.

The filing fee, in the amount of \$300, is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 082623.

Dated: August 4, 2016

Respectfully submitted,

/s/ Nadya C. Davis

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**Attorneys for Opposer**

Société des Produits Nestlé S.A.

**CERTIFICATE OF SERVICE**

I certify that on August 4, 2016, I served a copy of the above **NOTICE OF OPPOSITION** to the following by U.S. Mail, postage prepaid:

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Price Heneveld Llp  
PO Box 2567  
Grand Rapids, Michigan  
49501-2567

*Courtesy copies to:* [ptomail@priceheneveld.com](mailto:ptomail@priceheneveld.com); [hreick@priceheneveld.com](mailto:hreick@priceheneveld.com);  
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*/s/ Mark Moore*  
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Mark Moore