

ESTTA Tracking number: **ESTTA810224**

Filing date: **03/29/2017**

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	Sequel Naturals ULC
Granted to Date of previous extension	03/29/2017
Address	101-3001 Wayburne Drive Burnaby, British Columbia, V56 4W3 CANADA

Attorney information	Beth E. Cooperstein Holland & Hart LLP P.O. Box 8749 Denver, CO 80201 UNITED STATES docket@hollandhart.com, becooperstein@hollandhart.com Phone:303-295-8018
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**Applicant Information**

Application No	87021560	Publication date	11/29/2016
Opposition Filing Date	03/29/2017	Opposition Period Ends	03/29/2017
Applicant	BodyVega Nutrition, LLC 3493 Torrey Pines Akron, OH 44333 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 005. First Use: 2013/11/29 First Use In Commerce: 2013/11/29 All goods and services in the class are opposed, namely: Fish oil supplements; Amino acid supplements
Class 035. First Use: 2013/11/29 First Use In Commerce: 2013/11/29 All goods and services in the class are opposed, namely: On-line wholesale and retail store services featuring dietary and nutritional supplements, fish oil supplements and amino acid supplements


**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.	3622434	Application Date	10/04/2008
Registration Date	05/19/2009	Foreign Priority	NONE

		Date	
Word Mark	VEGA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/03/00 First Use In Commerce: 2004/08/00 nutritional supplements; meal replacement powders, capsules, tablets, oils, liquids, and gels		

U.S. Registration No.	5129244	Application Date	02/21/2012
Registration Date	01/24/2017	Foreign Priority Date	02/03/2012
Word Mark	VEGA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; nutritional supplements in gel form; hemp protein dietary supplements; mineral supplements; vitamin supplements; vitamins; dietary supplement drink mixes; protein and nutritional supplement shakemixes; powdered nutritional supplement drink mixes</p> <p>Class 029. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 edible sacha inchi seed oils; processed sacha inchi seeds; Energy bars derived from nuts and seeds; edible oil blends derived from seeds; nut-based and seed-based snack foods; sacha inchi seed-based meal replacement bars</p> <p>Class 030. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 Nutritional beverage and food flavourings; processed grain-based snack foods</p> <p>Class 032. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 Energy drinks; smoothies; smoothie mixes; sport drinks; ready to drink meal replacement beverages, namely, sacha inchi smoothies and shakes</p>		


U.S. Registration No.	5129245	Application Date	02/21/2012
Registration Date	01/24/2017	Foreign Priority Date	02/03/2012
Word Mark	VEGA		
Design Mark			
Description of Mark	The mark consists of the word "VEGA" with a leaf design on the "V".		
Goods/Services	<p>Class 005. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; nutritional supplements in gel form; hemp protein dietary supplements; mineral supplements; vitamin supplements; vitamins; dietary supplement drink mixes; protein and nutritional supplement shakemixes; powdered nutritional supplement drink mixes</p> <p>Class 029. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 edible sacha inchi seed oils; processed sacha inchi seeds; Energy bars derived from nuts and seeds; edible oil blends derived from seeds; nut-based and seed-based snack foods; sacha inchi seed-based meal replacement bars</p> <p>Class 030. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Nutritional beverage and food flavourings; processed grain-based snack foods</p> <p>Class 032. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Energy drinks; smoothies; smoothie mixes; sport drinks; ready to drink meal replacement beverages, namely, sacha inchi smoothies and shakes</p>		

U.S. Registration No.	5129243	Application Date	02/21/2012
Registration Date	01/24/2017	Foreign Priority Date	02/03/2012
Word Mark	VEGA ONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Nutritional, dietary and food supplements for general health and well-being an-		

	<p>dto enhance physical and mental performance; dietary supplement drink mixes; protein and nutritional supplement shake mixes; powdered nutritional supplement drink mixes</p> <p>Class 029. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Energy bars derived from nuts and seeds; nut-based and seed-based snack foods; sacha inchi seed-based meal replacement bars</p> <p>Class 030. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 processed grain-based snack foods</p> <p>Class 032. First use: First Use: 2015/01/01 First Use In Commerce: 2015/01/01 Energy drinks; smoothies; smoothie mixes; sport drinks</p>
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U.S. Registration No.	4342649	Application Date	10/18/2012
Registration Date	05/28/2013	Foreign Priority Date	10/17/2012
Word Mark	VEGA SPORT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2009/12/31 First Use In Commerce: 2009/12/31 Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance, nutritional supplements in gel form, mineral supplements, vitamin supplements, vitamins, dietary and nutritional supplement drink mixes, nutritional and dietary supplements formed and packaged as bars, nutritional supplement energy bars and nutritional supplement in the nature of a nutrient-dense, protein-based food bar; nutritional and dietary supplements for increasing athletic performance, namely, a three stage system comprised of plant-based nutritional and dietary supplements to prepare and energize for athletic workouts, for sustaining and providing endurance during athletic workouts and to recover and replenish from athletic workouts</p>		

U.S. Application No.	86094544	Application Date	10/17/2013
Registration Date	NONE	Foreign Priority Date	10/03/2013
Word Mark	VEGA ONE		

Design Mark	
Description of Mark	<p>The mark consists of the words "VEGA ONE" with leaves and vine designs to the right and a rectangle carrier beneath the wording.</p>
Goods/Services	<p>Class 005. First use: First Use: 2012/03/00 First Use In Commerce: 2012/03/00 (Based on Use in Commerce) (Based on 44(d) Priority Application) Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; nutritional supplements for general health and well-being and to enhance physical and mental performance, namely, protein powders for human consumption for use as a food additive for general health and to enhance physical and mental performance, hempprotein dietary supplements, mineral supplements, vitamin supplements and vitamins; nutritional supplement energy bars derived from nuts and seeds; (Based on 44(d) Priority Application) (Based on Intent to Use) Nutritional supplements for general health and well-being and to enhance physical and mental performance in gel form; nutritional meal replacements, namely, drink mixes, meal replacement bars, meal replacement powders, ready to drink meal replacement beverages and nutritional supplement; ground sacha inchi seed fiber for use as a dietary supplement; protein dietary supplements, namely, sacha inchi protein; dietary supplements in the nature of fiber powders; food fortifications, namely, nutritional food supplements for enriching foods and beverages derived from nuts, seeds and herbs</p> <p>Class 029. First use: First Use: 0 First Use In Commerce: 0 (Based on 44(d) Priority Application) (Based on Intent to Use) Nut and seed based snack bars; edible oil blends derived from seeds; edible sacha inchi seed oils; sacha inchi seed butters; processed sacha inchi seeds; nut-based and seed-based snack foods, namely, nut crisps and seed crisps; nut-based and seed-based snack puddings; nut and seed based milk beverages for use as milk substitute; sacha inchi seed based milks for use as milk substitute</p> <p>Class 030. First use: First Use: 0 First Use In Commerce: 0 (Based on 44(d) Priority Application) (Based on Intent to Use) Nutritional beverage flavorings and food flavorings; food flavorings derived from nuts, seeds and herbs; cookies; crackers; granola; ready to eat cereals; sacha inchi candies</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0 (Based on 44(d) Priority Application) (Based on Intent to Use) Energy drinks; smoothies; smoothie mixes; sports drinks</p>

Attachments	77585688#TMSN.png( bytes ) 85548349#TMSN.png( bytes ) 85548454#TMSN.png( bytes ) 85548276#TMSN.png( bytes ) 85757902#TMSN.png( bytes ) 86094544#TMSN.png( bytes ) 2017.03.29 - BODYVEGA Notice of Opposition.pdf(134603 bytes )
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Signature	/Beth E. Cooperstein/
Name	Beth E. Cooperstein
Date	03/29/2017

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

Sequel Naturals ULC,	)	
	)	Opposition No.
Opposer,	)	
	)	
v.	)	Mark: BODYVEGA
	)	
BodyVega Nutrition, LLC	)	
	)	Serial No. 87/021,560
Applicant.	)	
	)	

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**NOTICE OF OPPOSITION**

Sequel Naturals ULC (“Opposer”), a Canadian unlimited liability company, having an address at 101-3001 Wayburne Drive, Burnaby, British Columbia, Canada V56 4W3, believes it will be damaged by registration of the mark BODYVEGA shown in U.S. Trademark Application Serial No. 87/021,560 (the “Application”), filed by BodyVega Nutrition, LLC (“Applicant”) on May 2, 2016, covering “Fish oil supplements; Amino acid supplements” in Class 5 and “On-line wholesale and retail store services featuring dietary and nutritional supplements, fish oil supplements and amino acid supplements” in Class 35 and hereby opposes it.

As grounds for its opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Opposer is a leading provider of premium nutritional products in the United States.
2. Since well prior to the filing date of the Application and any claimed date of first use upon which Applicant may rely, Opposer has used its VEGA and VEGA-formative marks (collectively, the “VEGA Marks”) in connection with the marketing and sale of nutritional food and beverage products and supplements in the United States.

3. Opposer has sold hundreds of millions of dollars worth of nutritional supplements and related goods under the VEGA Marks in the United States and has spent hundreds of millions of dollars advertising and promoting its goods under these marks.

4. Opposer owns the following registered trademarks in the United States, among others, for the VEGA Marks:

<b><u>MARK</u></b>	<b><u>REG. NO.</u></b>	<b><u>REG. DATE</u></b>	<b><u>GOODS</u></b>
VEGA	3622434	5/19/2009	Cl. 5 - nutritional supplements; meal replacement powders, capsules, tablets, oils, liquids, and gels
VEGA	5129244	1/24/2017	Cl. 5 – Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; nutritional supplements in gel form; hemp protein dietary supplements; mineral supplements; vitamin supplements; vitamins; dietary supplement drink mixes; protein and nutritional supplement shake mixes; powdered nutritional supplement drink mixes  *Registration also covers goods in classes 29, 30 and 32
<b>vega</b>	5129245	1/24/2017	Cl 5 - Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; nutritional supplements in gel form; hemp protein dietary supplements; mineral supplements; vitamin supplements; vitamins; dietary supplement drink mixes; protein and nutritional supplement shake mixes; powdered nutritional supplement drink mixes  *Registration also covers goods in classes 29, 30 and 32
VEGA ONE	5129243	1/24/2017	Cl. 5 - Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance; dietary supplement drink mixes; protein and nutritional supplement shake mixes; powdered nutritional supplement drink mixes  *Registration also covers goods in classes 29, 30 and 32
VEGA SPORT	4342649	5/8/2013	Cl 5 - Nutritional, dietary and food supplements for general health and well-being and to enhance physical and mental performance, nutritional supplements in gel form, mineral supplements, vitamin supplements, vitamins, dietary and nutritional supplement drink mixes, nutritional and dietary supplements formed and packaged as bars, nutritional supplement energy bars and nutritional supplement in the nature of a nutrient-dense, protein-based food bar; nutritional and dietary supplements for increasing athletic performance, namely, a three stage system comprised of plant-based nutritional and dietary supplements to prepare and energize for athletic workouts, for sustaining and providing endurance during athletic workouts and to recover and replenish from athletic workouts



5. The registrations for each of the marks set forth above are valid and subsisting and therefore constitute *prima facie* evidence of the validity of the marks and registrations, and of Opposer's exclusive rights to use the marks in connection with the goods set forth in these registrations.

6. In addition, Registration No. 3622434 is incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b).

7. These registrations also provide constructive notice of Opposer's ownership of its VEGA Marks.

8. The Application covers goods and services that overlap with, and closely relate to those offered under Opposer's VEGA Marks.

9. Applicant filed the Application without Opposer's consent or permission.

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

10. Opposer re-alleges and incorporates by reference the preceding allegations.

11. Since well prior to the filing date of the Application, Opposer has used its VEGA Marks in connection with nutritional supplements, related food and beverage products and the retail sale of such goods.

12. The BODYVEGA mark set forth in the Application so closely resembles Opposer's prior used and registered VEGA 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).

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. 08-2623

Dated this 29th day of March, 2016.

Respectfully submitted

/Beth E. Cooperstein/

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**Attorneys for Opposer  
Sequel Naturals ULC**