

ESTTA Tracking number: **ESTTA907732**

Filing date: **07/06/2018**

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	Great HealthWorks, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	4150 SW 28TH WAY FORT LAUDERDALE, FL 33312 UNITED STATES		

Attorney information	Zachary Rich 4150 SW 28TH WAY FORT LAUDERDALE, FL 33312 UNITED STATES Email: trademarks@greathealthworks.com, ZRich@GreatHealthWorks.com		
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Applicant Information

Application No	87767015	Publication date	06/12/2018
Opposition Filing Date	07/06/2018	Opposition Period Ends	07/12/2018
Applicant	Alpha XL Distribution LLC 10151 Deerwood Park Blvd., STE 200-250 Jacksonville, FL 32256 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: Herbal supplements; Vitamin supplements; Vitamin tablets; Vitamin and mineral supplements; Vitamins
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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. Application No.	87771778	Application Date	01/26/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OMEGAXL XL IN EVERYTHING YOU DO		

Design Mark	<p>OMEGAXL XL IN EVERYTHING YOU DO</p>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Dietary supplements; Dietary and nutritional supplements		

U.S. Application No.	86792238	Application Date	10/19/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OMEGAXL PLUS		
Design Mark	<p>OMEGAXL PLUS</p>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Dietary supplements containing omega fatty acids		

U.S. Registration No.	5093705	Application Date	08/20/2015
Registration Date	12/06/2016	Foreign Priority Date	NONE
Word Mark	OMEGAXL BY GREAT HEALTHWORKS		
Design Mark	<p>OMEGAXL BY GREAT HEALTHWORKS</p>		

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2009/02/23 First Use In Commerce: 2009/02/23 Dietary supplements containing omega fatty acids

U.S. Registration No.	5142473	Application Date	05/28/2015
Registration Date	02/14/2017	Foreign Priority Date	NONE

Word Mark	OMEGAXL SPORT
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2016/12/05 First Use In Commerce: 2016/12/05 Dietary supplements containing omega-3 fatty acids
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U.S. Registration No.	5111024	Application Date	10/28/2015
Registration Date	12/27/2016	Foreign Priority Date	NONE

Word Mark	RESULTS YOU CAN FEEL...OMEGAXL
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2012/02/01 First Use In Commerce: 2012/02/01 Dietary supplements containing omega fatty acids
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U.S. Registration No.	3063715	Application Date	03/18/2005
Registration Date	02/28/2006	Foreign Priority Date	NONE

Word Mark	OMEGAXL
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2003/12/10 First Use In Commerce: 2003/12/15 Dietary supplement Class 029. First use: First Use: 2003/12/10 First Use In Commerce: 2003/12/15 Processed seafood and seafood extracts

U.S. Registration No.	3013041	Application Date	02/24/2004
Registration Date	11/08/2005	Foreign Priority Date	NONE
Word Mark	OMEGAXL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2003/12/10 First Use In Commerce: 2003/12/15 Dietary supplements derived from seafood and shellfish Class 029. First use: First Use: 2003/12/10 First Use In Commerce: 2003/12/15 processed seafood and seafood extracts		

Attachments	87771778#TMSN.png(bytes) 86792238#TMSN.png(bytes) 86731536#TMSN.png(bytes) 86643576#TMSN.png(bytes) 86801628#TMSN.png(bytes) 78590590#TMSN.png(bytes) 78373089#TMSN.png(bytes) AlphaXLOpposition.pdf(133386 bytes)
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Signature	/Zachary Rich/
Name	Zachary Rich
Date	07/06/2018

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

In the Matter of Application Serial No. 87-767015

For the mark: Alpha XL

Published: June 12, 2018

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Great HealthWorks, Inc.,		Opposition No.:
Opposer,		
v.		
Alpha XI Distribution LLC		
Applicant.		

NOTICE OF OPPOSITION

Opposer, Great HealthWorks, Inc. (“GHW”), a corporation organized and existing under the laws of Nevada with a principal place of business at 4150 SW 28th Way, Fort Lauderdale FL, 33312, believes that it will be damaged by the issuance of a registration for the alleged mark shown in Application Serial No. 87-767015. (“Applicant’s Mark” or “Alpha XL”) GHW hereby opposes same pursuant to Section 13(a) of the Lanham Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for opposition, GHW alleges as follows:

1. GHW is a vertically integrated direct to consumer marketing company that markets and sells health supplement products to consumers.

2. GHW is the owner of valid and subsisting United States Trademark Registration Nos. 3063715 and 3013041 on the Principal Register in the United States Patent and Trademark Office for the trademark OmegaXL (hereinafter “OmegaXL Mark”) for Class 5 Dietary Supplements and Class 29 Processed seafood and seafood extracts, which were issued on February 28, 2006 and November 8, 2005, and has become incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. § 1065. Attached as Exhibit 1 is a true and correct printout from the United States Patent and Trademark Office’s electronic database showing the current status and title of the registrations as of June 22, 2018.
3. GHW’s continuous use of the OmegaXL Mark in interstate commerce in the United States dates back since December 10, 2003 in connection with the manufacture, distribution, sale, marketing, and promotion of Dietary Supplements.
4. As a result of its widespread, continuous, and exclusive use of the OmegaXL Mark to identify its products and GHW as their source, GHW owns valid and subsisting federal statutory and common law rights to the OmegaXL Mark. The OmegaXL Mark is distinctive to both the consuming public and GHW’s trade.
5. GHW has expended substantial time, money, and resources marketing, advertising, and promoting its dietary supplements sold under the OmegaXL Mark including through national & international television infomercials airing over 450,000 times a year, print, direct mail, and online via advertising and social media. So far in 2018 alone, GHW spent millions of US Dollars on the marketing, advertising, and promotion of OmegaXL branded products.
6. As a result of the OmegaXL Mark’s distinctiveness and widespread use and promotion throughout the United States, and the world, the OmegaXL Marks are famous marks within

the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. 1125(c), and became famous prior to the filing of the Application.

7. The OmegaXL Marks have priority over the proposed mark because GHW's use, registration date, application filing date, and date of first use predate the Applicant's filing date and alleged date of first use or any other date on which the Applicant may rely for purposes of priority.
8. The applicant, Alpha XL Distribution LLC, is an online retailer located at 10151 Deerwood Park Blvd., Ste 200-250, Jacksonville, Florida 32256. Applicant's CEO, Michael Schindele, created no less than 6 registered companies in the State of Florida that sell and distribute dietary supplements through various online marketplaces, including Amazon.com.
9. Applicant seeks to register its proposed mark "Alpha XL" in international class 5 for dietary supplements. Applicant sells products with the proposed mark online via his website <https://alphaxl.us/> and on Amazon.com (<https://www.amazon.com/Alpha-XL-Testosterone-Ingredients-Performance/dp/B00YYSJ6W2>).
10. Applicant's proposed mark "Alpha XL" utilizes OmegaXL's & GHW's "XL" branding in dietary supplements. Additionally, Applicant's channels of trade, class of goods, target customer, and use of the Greek alphabet all give rise to confusion among the marketplace that Applicant and Applicant's product is somehow associated with GHW, and OmegaXL®.

COUNT 1
Likelihood of Confusion
15 U.S.C 1052(d)

11. GHW realleges and incorporates by reference the preceding allegations of its Notice of

Opposition.

12. Since well prior to the filing date of the Application, Applicant's alleged first use of the Alpha XL mark, or any priority date upon which Applicant may rely, GHW used one or more of the OmegaXL Marks in connection with its goods and services.
13. Pursuant to the factors set forth in *In re. E.I. DuPont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973), Applicant's proposed mark "Alpha XL" has a high likelihood to cause confusion among the marketplace with GHW's registered OmegaXL Marks.
14. The Alpha XL mark utilizes the Greek Alphabet & GHW's "XL" branding that through GHW's product line and advertising efforts become synonymous with GHW's product offerings. GHW has a number of pending and registered marks in the United States and around the world in International Class 5 (Dietary Supplements) utilizing the "XL" branding including but not limited to: OmegaXL (3063715, 3013041), OmegaXL Sport (5142473), OmegaXL by Great HealthWorks (5093705), ProbioticXL (4929076), GammaXL (87704606), and XL In Everything You Do (87771787).
15. Applicant's mark Alpha XL's channels of trade and class of goods are virtually identical to GHW's. Both Applicant and GHW's OmegaXL Marks are filed in International Class 5 Dietary Supplements. Additionally, Applicant sells its Alpha XL product offering both online and via Amazon.com. By comparison, GHW offers OmegaXL online via its website www.OmegaXL.com and www.GreatHealthWorks.com, GHW's Amazon Store, GHW's Walmart store, and via the GHW's eBay store. GHW expends significant resources advertising its OmegaXL products both nationally and internationally. Allowing Applicant's mark to register will permit Applicant to ride the coattails of GHW's advertising efforts.

16. Both Applicant and GHW target the same type of consumer, health conscious dietary supplement customers. Allowing Applicant's mark to register would likely cause confusion, mistake or deception among those consumers within the meaning of 15 U.S.C. § 1052(d).

WHEREFORE, Great HealthWorks, Inc., believes that it will be damaged by registration of the trademark shown in Application Serial No. 87-767015, and respectfully requests that the opposition is sustained, and Applicant's registration refused.

Respectfully submitted,

/s/Zachary R Rich, Esq./

Zachary R. Rich

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