

ESTTA Tracking number: **ESTTA913803**

Filing date: **08/06/2018**

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	Hero Nutritionals, Inc.
Granted to Date of previous extension	08/08/2018
Address	1900 Carnegie Avenue Building A Santa Ana, CA 92705 UNITED STATES

Correspondence information	RICHARD HEPNER ATTORNEY AT LAW 25291 FAIRGREEN MISSION VIEJO, CA 92692 UNITED STATES Email: RHEPNER@HEPNERLAW.COM Phone: 949-280-4800
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### Applicant Information

Application No	87632368	Publication date	04/10/2018
Opposition Filing Date	08/06/2018	Opposition Period Ends	08/08/2018
Applicant	HERO Ventures LLC 4570 SW Natchez Ct. Tualatin, OR 97062 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2015/04/23 First Use In Commerce: 2015/09/20  
All goods and services in the class are opposed, namely: Nutritional supplement meal replacement-bars for child athletes, for boosting energy in endurance sports


### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)


### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	5383123	Application Date	10/14/2014
Registration Date	01/23/2018	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONALS		

Design Mark	
Description of Mark	The mark consists of a leaf shape placed in a generally horizontal orientation against a square field, the word "HERO" appearing within the leaf shape, and the word "NUTRITIONALS" appearing across the bottom of the square field.
Goods/Services	Class 005. First use: First Use: 2014/10/07 First Use In Commerce: 2014/10/07 Dietary and nutritional supplements

U.S. Registration No.	4379986	Application Date	12/27/2012
Registration Date	08/06/2013	Foreign Priority Date	NONE
Word Mark	HERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1995/06/01 First Use In Commerce: 1995/06/01 Dietary and nutritional supplements		

U.S. Registration No.	3029888	Application Date	03/18/2004
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONALS		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/02/04 First Use In Commerce: 2005/02/04 Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements		

U.S. Registration No.	2995645	Application Date	03/18/2004
Registration Date	09/13/2005	Foreign Priority Date	NONE
Word Mark	HERO NUTRITIONALS		
Design Mark	<p style="text-align: center;"><b>HERO NUTRITIONALS</b></p>		
Description of Mark	the mark is presented in standard characters, without claim to any particular font, style, size or color		
Goods/Services	Class 005. First use: First Use: 2004/02/15 First Use In Commerce: 2004/02/15 Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements		

U.S. Registration No.	2771133	Application Date	06/26/2002
Registration Date	10/07/2003	Foreign Priority Date	NONE
Word Mark	BRING OUT THE HERO IN YOU		
Design Mark	<p style="text-align: center;"><b>BRING OUT THE HERO IN YOU</b></p>		
Description of Mark	NONE		

Goods/Services	<p>Class 005. First use: First Use: 2002/01/01 First Use In Commerce: 2002/04/01  DIETARY SUPPLEMENTS, NAMELY, VITAMINS, FOOD SUPPLEMENTS,  MINERAL SUPPLEMENTS, HERBAL SUPPLEMENTS, AND NUTRACEUTIC-  ALS</p> <p>Class 025. First use: First Use: 2002/01/01 First Use In Commerce: 2002/04/01  [ CLOTHING, namely, T-SHIRTS ]</p>
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Attachments	<p>86423876#TMSN.png( bytes )  85811422#TMSN.png( bytes )  76581734#TMSN.png( bytes )  76581733#TMSN.png( bytes )  76425422#TMSN.png( bytes )  Notice of Opposition_HERO FUEL_8-6-2018.pdf(962921 bytes )</p>
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Signature	/Richard J. Hepner/
Name	RICHARD J. HEPNER
Date	08/06/2018

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

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

In the Matter of Trademark Application Serial No. 87/632,368  
Published in the *Official Gazette* April 10, 2018

_____		)	
Hero Nutritionals, Inc.,		)	
	Opposer,	)	
		)	Opposition No. TBD
v.		)	
		)	
HERO Ventures LLC,		)	
	Applicant.	)	
_____		)	

**NOTICE OF OPPOSITION**

Hero Nutritionals, Inc., a corporation organized and existing under the laws of California, having a principal place of business located at 1900 Carnegie Avenue, Building A, Santa Ana, California 92705 (hereinafter “Opposer”), believes that it will be damaged by registration of the mark shown in application Serial No. 87/632,368 (hereinafter “Opposed Application”), filed by HERO Ventures LLC (hereinafter “Applicant”), and hereby opposes said application, the time for filing such Notice of Opposition against such application having been duly extended until August 8, 2018.

Opposer brings this opposition, pursuant to Section 13(a) of the Trademark Act of 1946, as amended, based upon a likelihood of confusion (Section 2(D)), and dilution by blurring (Section 2 and 43(c)). The grounds of this opposition are as follows:

1. Upon information and belief, Applicant is a limited liability company organized under the laws of Oregon, located and doing business at 4570 Natchez Court, Tualatin, Oregon 97062.
2. On October 3, 2017, Applicant filed application Serial No. 87/632,368 under Section 1(a) of the Lanham Act to register the mark HERO FUEL (hereinafter “Opposed Mark”) for

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“Nutritional supplement meal replacement bars for child athletes, for boosting energy in endurance sports” in Class 05 (hereinafter “Applicant’s Goods”).

3. Applicant, at the request of the Examining Attorney, disclaimed the descriptive word FUEL apart from the HERO FUEL mark as shown.

4. Founded in 1994, Opposer and its predecessors in business (hereinafter, collectively, “Opposer”) are, and have long been, a leading company in the dietary and nutritional supplement industry. Opposer’s HERO brand was launched in 1997.

5. Opposer is the owner of the trademark HERO, and other HERO-derivative trademarks, for dietary and nutritional supplement products (hereinafter, collectively, “Opposer’s Goods”). For decades prior to the filing of the Opposed Application, Opposer has continuously marketed dietary and nutritional supplement products in the United States and worldwide under Opposer’s HERO and HERO-derivative trademarks.

6. Opposer’s HERO and HERO-derivative trademarks have been registered on the Principal Register in respect to Opposer’s Goods in Class 05, as follows:

- (a) Serial No. 86423876 HERO NUTRITIONALS of January 23, 2018, for “Dietary and nutritional supplements”;
- (b) Serial No. 85811422 HERO of August 6, 2013, for “Dietary and nutritional supplements”;
- (c) Serial No. 85163745 HERO NUTRITIONAL PRODUCTS of July 12, 2011 (DEAD), for “Nutritional supplements, namely, vitamins, minerals, probiotics and herbals”;
- (d) Serial No. 76581734 HERO NUTRITIONALS of December 13, 2005, for “Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements”;

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- (e) Serial No. 76581733 HERO NUTRITIONALS of September 13, 2005, for “Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements”;
- (f) Serial No. 76425422 BRING OUT THE HERO IN YOU of October 7, 2003, for “DIETARY SUPPLEMENTS, NAMELY, VITAMINS, FOOD SUPPLEMENTS, MINERAL SUPPLEMENTS, HERBAL SUPPLEMENTS, AND NUTRACEUTICALS”;
- (g) Serial No. 76305592 HERO of September 30, 2003, for “VITAMINS, FOOD SUPPLEMENTS, MINERAL SUPPLEMENTS AND HERBAL SUPPLEMENTS” (DEAD); and
- (h) Serial No. 76209490 HERO NUTRITIONAL PRODUCTS of March 11, 2003, for “Nutritional Supplements” (DEAD).

Opposer is the owner of said registrations, the trademarks shown therein, and the good will of Opposer’s business connected with and symbolized by said trademark, including the good will established by use of the trademarks now abandoned, and use of the trademarks in commerce prior to formal registration. Opposer’s trademark registrations constitute conclusive evidence of Opposer’s ownership of said marks, their validity, and Opposer’s exclusive right to use them in connection with the goods identified in the registrations. Printouts from the U.S. Patent and Trademark Office’s TESS online database for the above-identified registrations are attached as Exhibits A-H, and are made part of the record in this opposition.

7. Opposer has used its HERO and HERO-derivative trademarks in connection with the marketing and sale of a broad set of dietary and nutritional supplement goods, including, in a non-limiting sense: SLICE OF LIFE® gummy vitamins, minerals and herbal supplements; SLICE OF LIFE® ENERGY™ gummy vitamins, specifically formulated and marketed to boost

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energy; YUMMI BEARS® gummy vitamins, minerals and herbal supplements for children; Cinnabetics™ cinnamon sticks; YUMMI STIX™ powdered nutritional supplement for children; and HEALTHY INDULGENCE™ chocolate supplements fortified with calcium and multi-vitamins.

8. Opposer's HERO and HERO-derivative trademarks have long been extensively used, advertised and promoted in the United States to identify and distinguish Opposer's Goods. Many millions of dollars worth of said goods have been marketed and sold under Opposer's HERO and HERO-derivative trademarks. Opposer has expended millions of dollars in advertising and promoting its trademarks in the United States. By reason of such activities, and because of the excellent quality of its products, Opposer has built up in its HERO and HERO-derivative trademarks a good will of incalculable value.

9. The descriptions of goods in Opposer's registered trademarks, "Dietary and nutritional supplements" and "Nutritional supplements", are without limitation as to the form, content, purpose and/or function of the supplement products.

10. All of Applicant's Products are identified without limitation as to their class of purchasers or channels of distribution.

11. All of the goods identified in Opposer's HERO and HERO-derivative trademark registrations are identified without limitation as to their class of purchasers or channels of distribution.

12. Opposer's Goods and Applicant's Goods are nutritional supplements sold to the same class of purchaser.

13. Opposer's Goods and Applicant's Goods are nutritional supplements sold in the same channels of distribution.

14. The U.S. Food and Drug Administration:

(a) has the sole authority to regulate dietary and nutritional supplements;



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(b) classifies “meal replacement bars” as a dietary and nutritional supplement.

15. All of Applicant’s Goods are identified as a “nutritional supplement”. Opposer’s Goods are identified as “dietary and nutritional supplements”. Therefore, Applicant’s Goods are identical to Opposer’s goods.

16. Applicant’s Goods and Opposer’s Goods are of a kind that may emanate from a single source under a single mark.

17. Opposer’s HERO trademark is arbitrary and inherently distinctive for Opposer’s goods.

18. Applicant’s HERO FUEL mark is identical to Opposer’s HERO trademark, except for the disclaimed descriptive term FUEL.

19. Applicant’s HERO FUEL mark so closely resembles Opposer’s HERO and HERO-derivative trademarks as to be likely, when applied to Applicant’s Goods, to cause confusion or to cause mistake, or to deceive. Such use will cause consumers to mistakenly believe that Applicant’s Goods originate with, or are sponsored, endorsed or approved by, Opposer, or are otherwise connected with Opposer or Opposer’s products.

20. In an Office Action dated January 17, 2018, the Examining Attorney found that Applicant’s Mark is confusingly similar to Opposer’s registered trademarks Reg. No. 4379986, Reg. No. 3992795, Reg. No. 3029888, and Reg. No. 2995645.

21. Upon information and belief, Applicant was aware of Opposer’s use of its HERO and HERO-derivative trademarks in the United States when Applicant adopted the mark HERO FUEL. Applicant then also had constructive notice of Opposer’s registered HERO and HERO-derivative trademarks.

22. All of the acts complained of herein by Opposer have occurred without its consent.

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23. Opposer cannot control the quality of Applicant's Goods. The use of Applicant's HERO FUEL mark would, therefore, place in jeopardy Opposer's high reputation symbolized by its well-known and invaluable HERO and HERO-derivative trademarks.

24. If Applicant were granted the registration applied for, it would thereby obtain the prima facie exclusive right to the use of the mark HERO FUEL for Applicant's Goods. Such registration would thus be a source of damage and injury to Opposer.

WHEREFORE Opposer respectfully prays that this opposition be sustained, and that the registration sought by Application Serial No. 87/632,368 be denied.


Respectfully Submitted,




By: \_\_\_\_\_  
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Attorney for Opposer  
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Mark : HERO FUEL  
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EXHIBIT A. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 86423876 HERO NUTRITIONALS of January 23, 2018

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**Word Mark** HERO NUTRITIONALS  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements. FIRST USE: 20141007. FIRST USE IN COMMERCE: 20141007  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 05.03.25 - Leaf, single; Other leaves  
26.09.21 - Squares that are completely or partially shaded  
**Serial Number** **86423876**  
**Filing Date** October 14, 2014  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** November 7, 2017  
**Registration Number** 5383123  
**Registration Date** January 23, 2018  
**Owner** (REGISTRANT) Hero Nutritionals, Inc. CORPORATION CALIFORNIA Legal Department 1900 Carnegie, Bldg. A Santa Ana CALIFORNIA 92705

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT B. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 85811422 HERO of August 6, 2013

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# HERO


<b>Word Mark</b>	HERO
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements. FIRST USE: 19950601. FIRST USE IN COMMERCE: 19950601
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	<b>85811422</b>
<b>Filing Date</b>	December 27, 2012
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 21, 2013
<b>Registration Number</b>	4379986
<b>Registration Date</b>	August 6, 2013
<b>Owner</b>	(REGISTRANT) Hero Nutritional Products, LLC LIMITED LIABILITY COMPANY CALIFORNIA Legal Department 991 Calle Negocio San Clemente CALIFORNIA 92673  (LAST LISTED OWNER) HERO NUTRITIONALS, INC. CORPORATION CALIFORNIA 1900 Carnegie Avenue, Building A Legal Department Santa Ana CALIFORNIA 92705

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT C. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 85163745 HERO NUTRITIONAL PRODUCTS of July 12, 2011 (DEAD)



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### HERO NUTRITIONAL PRODUCTS

**Word Mark** HERO NUTRITIONAL PRODUCTS  
**Goods and Services** (CANCELLED) IC 005. US 006 018 044 046 051 052. G & S: Nutritional supplements, namely, vitamins, minerals, probiotics, prebiotics and herbals. FIRST USE: 19950601. FIRST USE IN COMMERCE: 19950601  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 85163745  
**Filing Date** October 28, 2010  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** April 26, 2011  
**Registration Number** 3992795  
**Registration Date** July 12, 2011  
**Owner** (REGISTRANT) Hero Nutritional Products LLC LIMITED LIABILITY COMPANY CALIFORNIA 991 Calle Negocio Newport Beach CALIFORNIA 92673

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT D. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 76581734 HERO NUTRITIONALS of December 13, 2005

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**Word Mark** HERO NUTRITIONALS  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements. FIRST USE: 20050204. FIRST USE IN COMMERCE: 20050204  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 05.03.25 - Leaf, single; Other leaves  
26.09.21 - Squares that are completely or partially shaded  
**Serial Number** 76581734  
**Filing Date** March 18, 2004  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** June 14, 2005  
**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED  
**Registration Number** 3029888  
**Registration Date** December 13, 2005

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT E. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 76581733 HERO NUTRITIONALS of September 13, 2005

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# HERO NUTRITIONALS

**Word Mark** HERO NUTRITIONALS  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations, namely vitamin and mineral supplements; nutritional supplements. FIRST USE: 20040215. FIRST USE IN COMMERCE: 20040215  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 76581733  
**Filing Date** March 18, 2004  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** January 4, 2005  
**Registration Number** 2995645  
**Registration Date** September 13, 2005  
**Owner** (REGISTRANT) Hero Nutritional Products, L.L.C. LIMITED LIABILITY CORPORATION CALIFORNIA 991 Calle Negocio San Clemente CALIFORNIA 92673  
(LAST LISTED OWNER) HERO NUTRITIONALS, INC. CORPORATION CALIFORNIA 1900 Carnegie

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT F. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 76425422 BRING OUT THE HERO IN YOU of October 7, 2003

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# BRING OUT THE HERO IN YOU

**Word Mark** BRING OUT THE HERO IN YOU  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: DIETARY SUPPLEMENTS, NAMELY, VITAMINS, FOOD SUPPLEMENTS, MINERAL SUPPLEMENTS, HERBAL SUPPLEMENTS, AND NUTRACEUTICALS. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020401  
(CANCELLED) IC 025. US 022 039. G & S: [ CLOTHING, namely, T-SHIRTS ]. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020401

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 76425422

**Filing Date** June 26, 2002

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 15, 2003


**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED


**Registration Number** 2771133



Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT G. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 76305592 HERO of September 30, 2003 (DEAD)

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**Word Mark** HERO  
**Goods and Services** (CANCELLED) IC 005. US 006 018 044 046 051 052. G & S: VITAMINS, FOOD SUPPLEMENTS, MINERAL SUPPLEMENTS AND HERBAL SUPPLEMENTS. FIRST USE: 20020100. FIRST USE IN COMMERCE: 20020100  
(CANCELLED) IC 025. US 022 039. G & S: T-SHIRTS and HATS. FIRST USE: 20020100. FIRST USE IN COMMERCE: 20020100  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 03.01.14 - Bears other than Panda bears; Bears, koala; Bears, polar; Black bears; Grizzly bears; Koala bears; Polar bears  
03.01.16 - Heads of cats, dogs, wolves, foxes, bears, lions, tigers  
09.05.01 - Caps, including visors, military caps and baseball caps  
**Serial Number** 76305592  
**Filing Date** August 28, 2001  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** July 8, 2003

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

EXHIBIT H. Printout from the U.S. Patent and Trademark Office's TESS online database for Serial No. 76209490 HERO NUTRITIONAL PRODUCTS of March 11, 2003 (DEAD)



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# HERO NUTRITIONAL PRODUCTS

<b>Word Mark</b>	HERO NUTRITIONAL PRODUCTS
<b>Goods and Services</b>	(CANCELLED) IC 005. US 006 018 044 046 051 052. G & S: Nutritional Supplements. FIRST USE: 19950600. FIRST USE IN COMMERCE: 19950600
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	<b>76209490</b>
<b>Filing Date</b>	February 13, 2001
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	June 18, 2002
<b>Registration Number</b>	2694678
<b>Registration Date</b>	March 11, 2003
<b>Owner</b>	(REGISTRANT) Hero Nutritional Products L.L.C. CORPORATION CALIFORNIA 991 Calle Negocio San Clemente CALIFORNIA 92673
<b>Attorney of Record</b>	Paul N. Tauger
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITIONAL PRODUCTS" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK

Mark : HERO FUEL  
Appl. Serial No. : 87/632,368

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 6th day of August, 2018, a true copy of the foregoing NOTICE OF OPPOSITION was served via first-class mail to:

Amber C. Saunders  
Saunders Law Group  
715 Peachtree Street NE  
Suite 200  
Atlanta, GA 30308

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

The undersigned hereby certifies that this NOTICE OF OPPOSITION is being transmitted to the TTAB via the Electronic System for Trademark Trial and Appeals on this 6th day of August, 2018.



By: \_\_\_\_\_

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