

ESTTA Tracking number: **ESTTA965170**

Filing date: **04/05/2019**

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	VDF FutureCeuticals, Inc.
Granted to Date of previous extension	04/07/2019
Address	2692 N. State Rt. 1-17 Momence, IL 60954 UNITED STATES

Attorney information	Robert D. Leighton Goldberg Kohn Ltd. 55 East Monroe, Suite 3300 Chicago, IL 60603 UNITED STATES Robert.Leighton@goldbergkohn.com, tmapps@goldbergkohn.com 3122014000
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Applicant Information

Application No	87723027	Publication date	10/09/2018
Opposition Filing Date	04/05/2019	Opposition Period Ends	04/07/2019
Applicant	PLASTIMEA SA 112 rue Saint-Denis FOREST, 1190 BELGIUM		

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: Food 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.	3081622	Application Date	02/02/2004
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	NUTRIM		

Design Mark	NUTRIM
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Food ingredient, namely, processed whole oats

U.S. Registration No.	3527544	Application Date	02/02/2004
Registration Date	11/04/2008	Foreign Priority Date	NONE

Word Mark	NUTRIM
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Design Mark	NUTRIM
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/02/22 First Use In Commerce: 2001/02/22 Oat bran-based dietary supplements

U.S. Registration No.	5523508	Application Date	12/06/2017
Registration Date	07/24/2018	Foreign Priority Date	NONE

Word Mark	NUTRIM
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Design Mark	
Description of Mark	The mark consists of the word "NUTRIM" depicting a leafy stem running diagonally through a portion of the letter "N".
Goods/Services	Class 005. First use: First Use: 2014/04/15 First Use In Commerce: 2014/04/15 Oat bran hydrocolloid for use as a dietary supplement Class 030. First use: First Use: 2014/04/15 First Use In Commerce: 2014/04/15 Food additive, namely, oat bran hydrocolloid for use as an ingredient

Attachments	78360960#TMSN.png(bytes) 78360958#TMSN.png(bytes) 87709814#TMSN.png(bytes) Notice_of_Opposition_to_Nutrimea.pdf(77125 bytes)
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Signature	/Robert D. Leighton/
Name	Robert D. Leighton
Date	04/05/2019

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

In re application No. 87/723,027

VDF FutureCeuticals, Inc.
Opposer,

v.

PLASTIMEA SA,
Applicant.

Proceeding No.

Mark: NUTRIMEA

NOTICE OF OPPOSITION

VDF FutureCeuticals, Inc. (“VDF” or “Opposer”), an Illinois corporation having its principal place of business at 2692 N. State Route 1-17, Momence, IL 60954, will be damaged by registration of the proposed trademark NUTRIMEA in Class 5 for “food supplements” as set forth in Application Serial No. 87/723,027 (the “Application”) and hereby opposes the registration. In particular, the registration is likely to lead to confusion and false association with FC’s registered NUTRIM trademark which is used in connection with dietary supplements and food ingredients.

As grounds for the Opposition, FC alleges the following:

OPPOSER’S VALUABLE RIGHTS

1. FC is a family-owned and operated company that grew out of a farming business dating back more than a century. FC was incorporated in 1999 to focus on biological and technological innovations for the food and functional food industries. FC has developed a variety of products, including but not limited to probiotic, fruit, vegetable, and grain-based dietary and food supplements, or ingredients for such products.

2. For over 18 years, FC has used the NUTRIM mark in connection with its oat-based dietary supplement and food ingredient products. FC has made substantial investment in

advertising and promoting its NUTRIM brand products and has sold NUTRIM brand products extensively in various channels of trade to customers throughout the United States and other countries, including Canada, Australia, the EU, the Philippines, South Korea, and China.

3. FC has spent well in excess of \$1 million to promote its NUTRIM brand, including through significant online advertising, trade publications, and email marketing.

4. FC and its licensees sell NUTRIM to other businesses as well as directly to consumers through multiple channels of trade, including e-commerce, traditional retail, and food/drug/mass merchandise.

5. FC enjoys significant goodwill and recognition in the NUTRIM mark. FC has widely used its distinctive NUTRIM mark in commerce to designate and distinguish its goods from those of others. The NUTRIM word mark and related design mark are registered with the United States Patent and Trademark Office pursuant to Registration Nos. 3,081,622; 3,527,544; 5,523,508 (the “Nutrim Marks”) (See Exhibit A hereto). The Nutrim Marks cover the following goods and services:

Registration No.	Mark	Class / Goods & Services
3,081,622	NUTRIM	030: Food ingredient, namely, processed whole oats
3,527,544	NUTRIM	005: Oat bran-based dietary supplements
5,523,508		005: Oat bran hydrocolloid for use as a dietary supplement 030: Food additive, namely, oat bran hydrocolloid for use as an ingredient

6. The above-referenced trademark registrations are valid and subsisting. In addition to the above-referenced trademark registrations, FC also owns common law rights in its NUTRIM mark.

THE APPLICATION AT ISSUE

7. Applicant, Belgian company Plastimea SA, filed application No. 87/723,027 on December 15, 2017 on a 1(b) basis. The application was published on October 9, 2018 in the

Official Gazette for the following goods in Class 005 for “Food supplements.” On November 5, 2018, the Board granted Opposer’s request for an extension of time within which to file this Opposition, to and including February 6, 2019. On February 1, 2019, the Board granted an addition extension of time within which to file this Opposition, to and including April 7, 2019.

8. Since long before Applicant’s filing of the Application, FC has continuously used the Nutrim Marks in commerce to designate and distinguish its dietary and food supplement products and ingredients. In particular, FC has offered these services in United States commerce since prior to December 15, 2017, the filing date of the subject application.

LIKELIHOOD OF CONFUSION
(Section 2(d) of the Lanham Act)

9. Applicant’s registration and use of NUTRIMEA would harm and damage FC and its Nutrim Marks, is likely to cause confusion, mistake and/or deception as to the source, affiliation, and/or sponsorship between FC and FC’s goods and services, on the one hand, and between Applicant and Applicant’s goods and services, on the other. Registration and use of the NUTRIMEA mark would also dilute the distinctiveness of FC’s marks.

10. The subject mark of the Application, NUTRIMEA, is so similar to Opposer’s NUTRIM mark as to be likely to cause confusion or to cause mistake or to deceive, to Opposer’s harm and damage. The applied-for mark begins with and incorporates the entirety of the Opposer’s NUTRIM mark.

11. On information and belief, Applicant plans to advertise and promote its goods through the same or similar channels of trade as does Opposer. In particular, Applicant appears to maintain a website at https://www.plastimea.com/fr/2_laboratoires-nutrimea through which it promotes and sells dietary supplements in e-commerce. Similarly, FC maintains a website at

<https://www.futureceuticalsdirect.com/store/buy-nutrim.html> through which it promotes and sells its Nutrim product in e-commerce.

12. The goods recited in the subject Application are so related to the goods and services offered under Opposer's NUTRIM mark that the public is likely to be confused, deceived, and to assume erroneously that Applicant's goods or services are those of FC or that Applicant is in some way connected with, licensed, or sponsored by or affiliated with FC, all to FC's irreparable damage. In particular, the Application recites "Food supplements" in class 5 and FC's NUTRIM product is a food ingredient and dietary supplement.

13. Opposer did not consent to Applicant's use or registration of NUTRIMEA.

14. This Opposition is timely filed as the Opposer has received an extension of time up to and including April 7, 2019 within which to file this Opposition.

15. This Opposition is being filed electronically through ESTTA, pursuant to the Board's rules. The filing fees are being paid through ESTTA.

WHEREFORE, FC believes and avers that it is being, and will continue to be, damaged by the registration of the Application, and respectfully requests that the Application be rejected, and that the Opposition be sustained in favor of FC.

Dated: April 5, 2019

Respectfully submitted,

/s/ Robert D. Leighton

Robert D. Leighton
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*Attorneys for Opposer VDF FutureCeuticals,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing NOTICE OF OPPOSITION and exhibits thereto on Applicant by sending said copy via electronic mail to the email correspondence addresses of record as follows:

Michelle P. Ciotola
TM-CT@cantorcolburn.com

on this day, April 5, 2019.

/s/ Robert D. Leighton
Robert D. Leighton