

UNITED STATES PATENT AND TRADEMARK OFFICE  
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December 14, 2020

Opposition No. 91252805

*Merck KGAA*

*v.*

*The Winning Combination Inc.*

**M. Catherine Faint,  
Interlocutory Attorney:**

On November 11, 2020, Applicant filed a proposed amendment to its application Serial No. 88159796 with Opposer's consent.

By the proposed amendment, Applicant seeks to amend the identification of goods in International Class 5 as follows (added wording is underlined):

From: albumin dietary supplements; amino acid dietary supplements; beta carotene supplements; botanical dietary supplements for general health and well-being; calcium supplements; casein dietary supplements; dietary supplements for general health and well-being; dietary supplements for promoting weight loss; flaxseed dietary supplements; flaxseed for use as a dietary supplement; flaxseed oil dietary supplements; herbal and dietary supplements for promoting faster muscle recovery after exercise; herbal supplements for general health and well-being; herbal supplements for the promotion of healthy liver function; herbal supplements for the treatment of cardiovascular diseases; herbal supplements for the treatment of infectious diseases, namely, urinary tract infections; herbal supplements for the treatment of inflammatory diseases, namely, inflammatory bowel diseases and inflammatory connective tissue diseases; herbal supplements for the treatment of the musculoskeletal system, namely, connective tissue diseases, cartilage injuries; lecithin for use as a dietary supplement; linseed

dietary supplements; linseed oil dietary supplements; mineral supplements; nutritional supplements for building body mass; nutritional supplements for general health and well-being; soy protein dietary supplements; vitamin supplements; wheat germ dietary supplements; protein powders for making meal replacement drinks adapted for medical use; protein supplement shakes; folic acid supplements; multi-vitamin preparations; vitamin A preparations; vitamin B preparations; vitamin C preparations; vitamin D preparations; vitamin enhanced water for medical purposes; vitamin preparations; vitamin preparations in the form of meal replacement powders; appetite suppressants; appetite suppressant pills; dietary fiber to aid digestion; dietary fiber as a food additive to aid digestion; diuretics; laxatives; medicines for alleviating constipation; nutritional supplement meal replacement bars for boosting energy; vitamin preparations in the form of meal replacement drinks adapted for medical purposes

To: albumin dietary supplements; amino acid dietary supplements; beta carotene supplements; botanical dietary supplements for general health and well-being; calcium supplements; casein dietary supplements; dietary supplements for general health and well-being; dietary supplements for promoting weight loss; flaxseed dietary supplements; flaxseed for use as a dietary supplement; flaxseed oil dietary supplements; herbal and dietary supplements for promoting faster muscle recovery after exercise; herbal supplements for general health and well-being; herbal supplements for the promotion of healthy liver function; herbal supplements for the treatment of cardiovascular diseases; herbal supplements for the treatment of infectious diseases, namely, urinary tract infections; herbal supplements for the treatment of inflammatory diseases, namely, inflammatory bowel diseases and inflammatory connective tissue diseases; herbal supplements for the treatment of the musculoskeletal system, namely, connective tissue diseases, cartilage injuries; lecithin for use as a dietary supplement; linseed dietary supplements; linseed oil dietary supplements; mineral supplements; nutritional supplements for building body mass; nutritional supplements for general health and well-being; soy protein dietary supplements; vitamin supplements; wheat germ dietary supplements; protein powders for making meal replacement drinks adapted for medical use; protein supplement shakes; folic acid supplements; multi-vitamin preparations; vitamin A preparations; vitamin B preparations; vitamin C preparations; vitamin D preparations; vitamin enhanced water for medical purposes; vitamin preparations; vitamin preparations in the form of meal replacement powders; appetite suppressants; appetite suppressant pills; dietary fiber to aid digestion; dietary fiber as a food additive to aid digestion; diuretics; laxatives; medicines for alleviating constipation; nutritional supplement meal replacement bars for boosting energy; vitamin

preparations in the form of meal replacement drinks adapted for medical purposes; **all of the foregoing being non-prescription goods**

The amendment is limiting in nature, as required by Trademark Rule 2.71(a). Because Opposer consents thereto, the amendment is approved and entered. *See* Trademark Rule 2.133(a).

If the amendment resolves this proceeding, Opposer is allowed until **THIRTY DAYS** from the date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. *See* Trademark Rule 2.106(c).

If no response is filed, proceedings will remain suspended and Opposer's time to file a response to Applicant's motion for summary judgment will be reset.<sup>1</sup>

Proceedings are otherwise suspended.

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<sup>1</sup> The stipulated motion to suspend filed November 10, 2020 is moot.