

ESTTA Tracking number: **ESTTA1156855**

Filing date: **09/01/2021**

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	Church & Dwight Co., Inc.
Granted to Date of previous extension	10/20/2021
Address	500 CHARLES EWING BOULEVARD EWING, NJ 08628 UNITED STATES
Attorney information	BROOKS R. BRUNEAU FISHERBROYLES LLP 100 OVERLOOK CENTER SECOND FLOOR PRINCETON, NJ 08540 UNITED STATES Primary Email: brooks.bruneau@fisherbroyles.com Secondary Email(s): denise.mcculloch@fisherbroyles.com, docketing@fisherbroyles.com, Daniel.Harshman@fisherbroyles.com 609 454 6772
Docket Number	04790.O139

Applicant Information

Application No.	90174529	Publication date	06/22/2021
Opposition Filing Date	09/01/2021	Opposition Period Ends	10/20/2021
Applicant	SDM Group Inc. 5 NANCY LANE MONSEY, NY 10952 UNITED STATES		


Goods/Services Affected by Opposition


Class 032. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Syrup for making soft drinks; soft drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b), 44(e) or 66(a)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3505913	Application Date	02/15/2007
Registration Date	09/23/2008	Foreign Priority Date	NONE
Word Mark	VITAFUSION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/05/14 First Use In Commerce: 2007/08/01 Dietary supplements; Vitamins		

U.S. Registration No.	6038545	Application Date	04/04/2019
Registration Date	04/21/2020	Foreign Priority Date	NONE
Word Mark	VITAFUSION GOODNESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2019/10/00 First Use In Commerce: 2019/10/00 Vitamins		

U.S. Registration No.	3993238	Application Date	11/22/2010
Registration Date	07/12/2011	Foreign Priority Date	NONE
Word Mark	VITAFUSION POWER C		

Design Mark	VITAFUSION POWER C
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Dietary and nutritional supplements containing vitamin C

U.S. Registration No.	6397842	Application Date	05/01/2020
Registration Date	06/22/2021	Foreign Priority Date	NONE
Word Mark	VITAFUSION POWER ZINC		
Design Mark	VITAFUSION POWER ZINC		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2020/04/23 First Use In Commerce: 2020/08/10 Dietary and nutritional supplements containing Zinc		

Attachments	77107994#TMSN.png(bytes) 88371680#TMSN.png(bytes) 85182613#TMSN.png(bytes) 88896947#TMSN.png(bytes) VITAFUSE Notice of Opp.pdf(218161 bytes)
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Signature	/brooks r. bruneau/
Name	BROOKS R. BRUNEAU
Date	09/01/2021

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

_____	:	Opposition No.: _____
Church & Dwight Co., Inc.,	:	Application No.: 90174529
Opposer,	:	Mark: VITAFUSE
v.	:	Class: 32
	:	
SDM Group, Inc.	:	Published: June 22, 2021
Applicant.	:	
_____	:	

NOTICE OF OPPOSITION

Church & Dwight Co., Inc., a corporation of the State of Delaware, with a business address of 500 Charles Ewing Blvd., Ewing, New Jersey, 08628 (hereinafter “Opposer”), believes it will be damaged by the registration of the mark VITAFUSE in connection with the Class 32 listing of goods “syrup for making soft drinks; soft drinks” owned by SDM Group, Inc., a corporation of the State of New York, with a business address of 5 Nancy Lane, Monsey, New York 10952 (hereinafter “Applicant”) and hereby opposes said application. As grounds for this Opposition, it is alleged as follows:

1. Opposer owns multiple registrations for VITAFUSION Trademarks including the following marks:

Trademark	Goods	Registration No.
VITAFUSION	Int'l Class: 05 Dietary supplements; Vitamins	3505913
VITAFUSION GOODNESS	Int'l Class: 05 Vitamins	6038545
VITAFUSION POWER C	Int'l Class: 05 Dietary and nutritional supplements containing vitamin C	3993238
VITAFUSION POWER ZINC	Int'l Class: 05 Dietary and nutritional supplements containing Zinc	6397842

The above listed trademarks and registrations are hereinafter referred to as “VITAFUSION Marks.”

2. Opposer has spent a great deal of time and money in promoting is VITAFUSION trademarks and associated products, such that the VITAFUSION Marks are well known among U.S. consumers.

3. The dietary supplements and vitamins provided in connection with the VITAFUSION Marks are comprised of a gummy chewable with the taste and texture similar to gummy candies, and in addition to the vitamins and/or supplements the products contain fruit flavors.

Trademark Act Section 2(d) Claim

4. Prior to the September 11, 2020 filing date of Applicant's VITAFUSE trademark application serial No. 90174529, Opposer had established rights in its VITAFUSION Marks dating back to 2007, with its first registration dating back to September of 2008.

5. There is no doubt as to seniority in this case. Opposer's use and registration of its VITAFUSION Marks predates Applicant's application filing date by over ten years.

6. Applicant has merely abbreviated the VITAFUSION trademark to read "VITAFUSE" .

7. Consumers would view VITAFUSE as either an abbreviation of VITAFUSION or an obvious variation on VITAFUSION.

8. Applicant seeks to register its mark in connection with syrup for making soft drinks and soft drinks.

9. Because Opposer's dietary supplements and vitamins come in gummy form that include sweeteners, it is distinctly likely that U.S. consumers will believe that syrup for making soft drinks and soft drinks under the VITAFUSE trademark will be emanating from the same source as those goods offered under the VITAFUSION Marks.

10. Given the popularity of enriched waters and vitamin enriched beverages, U.S. consumers would believe there is a natural association between Applicant's goods offered in connection with the VITAFUSE mark and the goods of Opposer offered in connection with its VITAFUSION Marks.

11. Beverages are within the natural area of expansion of Opposer in connection with its VITAFUSION Marks because consumers would reasonably expect beverage goods to emanate from the same source as the VITAFUSION dietary supplements and vitamins.

12. By utilizing VITAFUSE, an obvious and clear abbreviation/variant of the VITAFUSION trademark, Applicant is relating its VITAFUSE trademark and any associated goods to Opposer's VITAFUSION Marks and its related goods.

13. Upon information and belief, there has been no use to date of Applicant's VITAFUSE mark in connection with syrup for making soft drinks or soft drinks.

14. Use of the VITAFUSE mark by Applicant in connection with syrup for making soft drinks and soft drinks at the same time Opposer is using its VITAFUSION Marks is likely to cause confusion or to cause mistake and deception in the industry and among purchases, and potential purchasers of Opposer's goods, resulting in damage to Opposer. Moreover, use of VITAFUSE is likely to cause a belief by consumers that Applicant's goods are those of Opposer or are otherwise endorsed by, sponsored by or approved by Opposer, causing damage to Opposer, including tarnishing the reputation of its VITAFUSION Marks. Additionally, any faults, disappointments, complaints or other dissatisfaction a consumer might experience when using VITAFUSE branded products of Applicant will inure to the detriment of Opposer. As a result, registration should be denied under Trademark Act Section 2(d).

Trademark Act Section 1(b) Claim

15. Opposer further asserts that in violation of Trademark Act Section 1(b), Applicant did not have a bona fide intention to use its VITAFUSE mark in U.S. commerce in connection with all the listed goods in Application Serial No. 90174529 at time of filing the application.

16. Due to the failure of Applicant having a genuine bona fide intention to use the VITAFUSE trademark with all the listed goods in U.S. commerce, the VITAFUSE Trademark Application Serial No. 90174529 is void ab initio.

CONCLUSION

17. Applicant's potential registration of VITAFUSE will cause confusion and/or mistake or will deceive consumers in the industry as to the source of Applicant's goods or other goods bearing the VITAFUSE mark. Such registration will handicap and damage both the legitimate present and future activities of Opposer by placing Applicant in a position to raise doubts as to the right of Opposer to use

its VITAFUSION Marks with the goods listed in its registrations, as well as in connection with goods in its natural area of expansion including beverages. If the application herein opposed is granted registration, Applicant would have the presumptive right to use the trademark in connection with the listed Class 32 goods, and such use of the VITAFUSE mark by Applicant will blur the identification of Opposer as to the source of products offered under the VITAFUSION Marks, as well with other goods that come within Opposer's natural area of expansion, and will tarnish the association with which said VITAFUSION Marks have come to convey. As a result, Opposer will eventually be deprived of all distinctiveness in its VITAFUSION Marks.

WHEREFORE, Opposer requests that registration of Application Serial No. 90174529 be denied, and this opposition sustained.

Respectfully submitted

CHURCH & DWIGHT CO., INC.

Dated: September 1, 2021

By: /Brooks R. Bruneau/
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify this Notice of Opposition was electronically filed with the Trademark Trial and Appeal Board this 1st day of September, 2021.

/Brooks R. Bruneau/
(Signature)
September 1, 2021
(Date of Signature)