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Filing date: **04/06/2022**

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

Proceeding no.	91271564
Party	Defendant Happy Go Healthy, Ltd.
Correspondence address	APRIL L. BESL DINSMORE & SHOHL LLP 255 E. 5TH ST., SUITE 1900 CINCINNATI, OH 45202 UNITED STATES Primary email: april.besl@dinsmore.com Secondary email(s): trademarks@dinsmore.com, kristi.wells@dinsmore.com, michael.frey@dinsmore.com 513-977-8200 x8527
Submission	Motion to Suspend for Civil Action
Filer's name	Michael G. Frey
Filer's email	april.besl@dinsmore.com, trademarks@dinsmore.com, michael.frey@dinsmore.com, kristi.wells@dinsmore.com
Signature	/michael.g.frey/
Date	04/06/2022
Attachments	joint motion to suspend.pdf(3944280 bytes)

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

In the Matter of Application Serial No. 90089335
Published on May 11, 2021

Hofseth BioCare, ASA Corporation, Opposer, v. Happy Go Healthy, Ltd., Applicant.	)	Opposition No. 91271564 Mark: BRILLIANT BITES

JOINT MOTION TO SUSPEND FOR CIVIL ACTION

Applicant, Happy Go Healthy, Ltd., (hereinafter "Applicant") and Opposer, Hofseth BioCare, ASA Corporation (hereinafter "Opposer"), pursuant to Trademark Rule 2.117(a) (37 C.F.R. § 2.117(a)), and Section 510.02 (a) of the Trademark Trial and Appeal Board Manual of Procedure (hereinafter referred to as "TBMP"), hereby jointly move the Trademark Trial and Appeal Board for a suspension of the proceedings in Opposition No. 91271564 due to a pending civil action between the parties in the U.S. District Court for the Northern District of California (Case No. 5:21-cv-8763).

A copy of the complaint that was filed by Opposer in the District Court is enclosed as *Exhibit A*. The claims contained in the pending civil action are essentially duplicative of the claims in this Opposition No. 91271564. The civil action is pending at this time and the outcome of the civil action will be dispositive on the issues before the Board in this Opposition.

WHEREFORE, Applicant and Opposer respectfully request that this Opposition proceeding be suspended until termination of the above-referenced civil action.

Respectfully submitted,

DINSMORE & SHOHL LLP

s/April L. Besl/

April L. Besl
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Attorneys for Applicant, *Happy Go Healthy, Ltd.*

Date: March 30, 2022

KOLISCH HARTWELL, P.C.

s/*David P. Cooper*/

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Email: cooper@khpatent.com
Attorney for Opposer, *Hofseth BioCare, ASA Corporation*

Date: April 6, 2022

EXHIBIT A

DAVID P. COOPER, Oregon State Bar No. 880367 (*Pro Hac Vice to be Filed*)
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

Hofseth BioCare, ASA Corporation, a Norwegian corporation, Plaintiff, v. Happy Go Healthy, Ltd., an Ohio limited liability company, **Defendant**.	**Case No.** 5:21-cv-8763 COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND FALSE DESIGNATION OF ORIGIN DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, Hofseth BioCare, ASA Corporation ("Plaintiff" or "HBC"), for its Complaint against Happy Go Healthy, Ltd. ("Defendant" or "HGH"), alleges, based on

actual knowledge with respect to Plaintiff's acts, and based on information and belief with respect to all other matters, as follows:

INTRODUCTION

1. HBC brings this action because Defendant is infringing HBC's BRILLIANT trademarks for dietary supplements for animals, including salmon oil supplements, by using BRILLIANT and BRILLIANT BITES for closely competing products.

THE PARTIES

2. Plaintiff Hofseth BioCare, ASA is a Norwegian corporation, having a head office at Kipervikgata 13, Alesund, Norway.

3. Defendant Happy Go Healthy, Ltd. is an Ohio limited liability company, believed to have a place of business and mailing address at 2407 Ashland Avenue, Cincinnati, Ohio 45206.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338 because it concerns federal causes of action arising under the trademark laws of the United States, including the Lanham Act, 15 U.S.C. §§ 1051, *et seq*.

5. The Court has personal jurisdiction over Defendant because Defendant sells products online to buyers in this district, otherwise conducts business within this district,

and because Defendant has committed tortious activities of trademark infringement within this district.

6. Venue is proper in this Court under at least 28 U.S.C. § 1391(b) and (c).

FACTUAL BACKGROUND

7. Plaintiff HBC has established broad rights in its BRILLIANT trademarks for animal dietary supplements by continuously using them for over two years, beginning at least as early as May 31, 2019, in the U.S.

8. HBC is the owner of the following three U.S. Trademark Applications for registrations of its BRILLIANT trademarks:

U.S. Trademark App. No. 90/688,435 for BRILLIANT (block letters) for dietary supplements for animals and other related goods and services, based on use of the mark in the U.S. since at least as early as May 31, 2019;

U.S. Trademark App. No. 90/688,443 for BRILLIANT SALMON OIL (block letters) for dietary supplements for animals and other related goods and services, based on use of the mark in the U.S. since at least as early as May 31, 2019;

U.S. Trademark App. No. 90/694,817 for

(stylized + design) for dietary supplements for animals and other related goods and services, based on intent to use the mark in the U.S. filed on May 6, 2021;

See Exhibit A.

9. HBC's rights in its BRILLIANT marks are longstanding and well-established, as common law marks and HBC expects to receive federal registrations for them as the examination and registration processes for its pending applications are completed.

10. On information and belief, Defendant Happy Go Healthy began its unauthorized use of BRILLIANT BITES and BRILLIANT long after HBC established its rights in its BRILLIANT trademarks.

11. Defendant is currently misappropriating HBC's BRILLIANT trademarks by selling animal dietary supplements, including products containing salmon oil supplements, for example at www.happygohealthypets.com. Exhibit B.[1]

12. Defendant has operated a website at the URL noted in the preceding paragraph since about 2018 but, on information and belief, has only begun using BRILLIANT BITES for animal dietary supplements since about February 2021, almost two years after HBC established its BRILLIANT trademark rights.

13. On September 8, 2021, HBC filed an opposition against HGH's application for federal registration of BRILLIANT BITES for dietary supplements for pets by the U.S. Patent and Trademark Office.

[1] Printout on November 11, 2021 of page at https:// https://www.happygohealthypets.com/shop

14. Since September 8, 2021, Defendant has continued to advertise and sell products and services on its website using BRILLIANT BITES.

COUNT I –FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN UNDER 15 USC § 1125

15. HBC incorporates by reference all preceding paragraphs.

16. This count for unfair competition and false designation of origin arises under the Lanham Trademark Act of July 5, 1946, 15 U.S.C. §§ 1051 et seq. and particularly § 1125(a) thereof.

17. HBC owns its BRILLIANT trademarks for animal dietary supplements, and those trademarks are valid and enforceable against Defendant.

18. HBC has used its BRILLIANT trademarks in the animal dietary supplements market since as early as May 31, 2019. HBC's BRILLIANT trademarks are distinctive, and they are associated with HBC's sale of high-quality animal dietary supplements.

19. HBC's BRILLIANT-branded products have earned a positive reputation among pertinent consumers for effectiveness and high quality, among other things.

20. HBC has spent substantial time, money and effort to develop its line of BRILLIANT-branded animal dietary supplements. By doing so, HBC has developed consumer recognition and awareness of its trademarked products and services, and

informed its customers and potential customers of the benefits of HBC's BRILLIANT-branded products.

21. Defendant's use of BRILLIANT and similar trademarks for animal dietary supplements, which began long after HBC established its senior trademark rights, has created, and is likely to continue to create, consumer confusion, unpermitted association with HBC, and harm to HBC's brand and reputation of HBC's BRILLIANT trademarks. The confusion, unpermitted association, and harm will be among customers, potential customers, and others in the market for animal dietary supplements who are mistaken as to the origin of each party's goods, or who mistakenly believe HBC and Defendant are commonly owned, operated, or otherwise affiliated. Pertinent consumers have been, and are likely to continue being, confused as to the origin, sponsorship, authorization and/or approval by HBC of Defendant's company and products.

22. HGH's unfair competition and false designation of origin have caused, and continue to cause, irreparable harm to HBC's brand and reputation, for which there is no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That Defendant committed trademark infringement, unfair competition, and false designation of origin;

B. For an award of Defendant's profits and Plaintiff's damages, in an amount to be proven at trial, for unfair competition and false designation of origin under 15 U.S.C. § 1125.

C. For temporary, preliminary and permanent injunctive relief from this Court prohibiting Defendant from engaging, or continuing to engage, in the unlawful or unfair business acts or practices described herein, including the unauthorized use of any of Plaintiff's BRILLIANT trademarks; acts of trademark infringement; false designation of origin; unfair competition; and any other act in derogation of Plaintiff's rights;

G. For temporary, preliminary and permanent injunctive relief from this Court prohibiting Defendant from using BRILLIANT, BRILLIANT BITES, and colorably similar marks, including orders to website host(s) to delete the webpage in Exhibit B;

H. For Plaintiff's reasonable attorney fees;

I. For all costs related to this matter; and

J. For such other and further relief as the Court may deem just and equitable.

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//

JURY DEMAND

HBC demands a trial by jury on all issues properly tried before a jury.

DATED November 11, 2021.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

By s/Owen W. Dukelow
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Owen W. Dukelow, OSB No. 965318
E-mail: owen@khpatent.com
260 Sheridan Avenue, Suite 200
Palo Alto, California 94306
Telephone: (503) 781-5357

Of Attorneys for Plaintiff Hofseth BioCare ASA Corporation.

For assistance with TSDR, email **teas@uspto.gov** and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

Processing Wait Times: Please note that due to an extraordinary surge in applications, processing times are longer than usual. See **current trademark processing wait times** for more information.

STATUS | DOCUMENTS | Back to Search | Print

Generated on:	This page was generated by TSDR on 2021-08-23 18:51:59 EDT
Mark:	BRILLIANT BRILLIANT
US Serial Number:	90688435
Application Filing Date:	May 03, 2021
Register:	Principal
Mark Type:	Trademark
TM5 Common Status Descriptor:	LIVE/APPLICATION/Awaiting Examination The trademark application has been accepted by the Office (minimum filing requirements) and has not yet been assigned
Status:	New application will be assigned to an examining attorney approximately 6 months after filing date.
Status Date:	Jul. 26, 2021

Mark Information

Expand All

Mark Literal Elements:	BRILLIANT
Standard Character Claim:	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type:	4 - STANDARD CHARACTER MARK

Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:	dietary supplements for animals and other related goods and services		
International Class(es):	005 - Primary Class	**U.S Class(es):**	005, 006, 018, 044, 04
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	May 31, 2019	**Use in Commerce:**	May 31, 2019

Basis Information (Case Level)

Privacy - Terms

Filed Use:	Yes	**Currently Use:**	Yes
Filed ITU:	No	**Currently ITU:**	No
Filed 44D:	No	**Currently 44E:**	No
Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name:	Hofseth BioCare ASA		
Owner Address:	Molovegen 6 ÅLESUND NORWAY 6004		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	NORWAY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	David P. Cooper	**Docket Number:**	ZCO401
Attorney Primary Email Address:	docketing@khpatent.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	DAVID P. COOPER KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL ST., SUITE 300 PORTLAND, OREGON UNITED STATES 97204		
Phone:	503-224-6655	**Fax:**	503-972-9115
Correspondent e-mail:	docketing@khpatent.com mandi@khpatent.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	David P. Cooper

Prosecution History

Date	Description	Proceeding Number
Aug. 05, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information

Assignment Abstract Of Title Information - None recorded

Proceedings - None recorded

Privacy - Terms

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Generated on:	This page was generated by TSDR on 2021-08-23 18:53:46 EDT
Mark:	BRILLIANT SALMON OIL BRILLIANT SALMON OIL
US Serial Number:	90688443
Application Filing Date:	May 03, 2021
Register:	Principal
Mark Type:	Trademark
TM5 Common Status Descriptor:	LIVE/APPLICATION/Awaiting Examination The trademark application has been accepted by the Office (minimum filing requirements) and has not yet been assigned
Status:	New application will be assigned to an examining attorney approximately 6 months after filing date.
Status Date:	Jul. 26, 2021

Mark Information

Expand All

Mark Literal Elements:	BRILLIANT SALMON OIL
Standard Character Claim:	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type:	4 - STANDARD CHARACTER MARK

Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:	dietary supplements for animals and other related goods and services		
International Class(es):	005 - Primary Class	**U.S Class(es):**	005, 006, 018, 044, 04
Class Status:	ACTIVE		
Basis:	1(a)		
First Use:	May 31, 2019	**Use in Commerce:**	May 31, 2019

Basis Information (Case Level)

Privacy - Terms

Filed Use:	Yes	**Currently Use:**	Yes
Filed ITU:	No	**Currently ITU:**	No
Filed 44D:	No	**Currently 44E:**	No
Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name:	Hofseth BioCare ASA		
Owner Address:	Molovegen 6 ÅLESUND NORWAY 6004		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	NORWAY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	David P. Cooper	**Docket Number:**	ZCO402
Attorney Primary Email Address:	docketing@khpatent.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	DAVID P. COOPER KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL ST., SUITE 300 PORTLAND, OREGON UNITED STATES 97204		
Phone:	503-224-6655	**Fax:**	503-972-9115
Correspondent e-mail:	docketing@khpatent.com mandi@khpatent.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	David P. Cooper

Prosecution History

Date	Description	Proceeding Number
Aug. 05, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

Privacy - Terms

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Processing Wait Times: Please note that due to an extraordinary surge in applications, processing times are longer than usual. See **current trademark processing wait times** for more information.

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Generated on:	This page was generated by TSDR on 2021-08-23 18:54:44 EDT
Mark:	BRILLIANT
US Serial Number:	90694817
Application Filing Date:	May 06, 2021
Register:	Principal
Mark Type:	Trademark
TM5 Common Status Descriptor:	LIVE/APPLICATION/Awaiting Examination The trademark application has been accepted by the Office (minimum filing requirements) and has not yet been assigned
Status:	New application will be assigned to an examining attorney approximately 6 months after filing date.
Status Date:	Jul. 26, 2021

Mark Information

Expand All

Mark Literal Elements:	BRILLIANT
Standard Character Claim:	No
Mark Drawing Type:	3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)
Description of Mark:	The mark consists of a stylized form of the word Brilliant with stylized light rays positioned to the upper left c
Design Search Code(s):	26.17.01 - Straight line(s), band(s) or bar(s); Lines, straight; Bars, straight; Bands, straight 26.17.06 - Lines, diagonal; Diagonal line(s), band(s) or bar(s); Bars, diagonal; Bands, diagonal

Goods and Services

Note:
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:	dietary supplements for animals and other related goods and services
International Class(es):	005 - Primary Class
U.S Class(es):	005, 006, 018, 044, 04
Class Status:	ACTIVE
Basis:	1(b)

Privacy - Terms

Basis Information (Case Level)

Filed Use:	No	**Currently Use:**	No
Filed ITU:	Yes	**Currently ITU:**	Yes
Filed 44D:	No	**Currently 44E:**	No
Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name:	Hofseth BioCare ASA		
Owner Address:	Molovegen 6 ÅLESUND NORWAY 6004		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	NORWAY

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	David P. Cooper	**Docket Number:**	ZCO403
Attorney Primary Email Address:	docketing@khpatent.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address:	DAVID P. COOPER KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL ST., SUITE 300 PORTLAND, OREGON UNITED STATES 97204		
Phone:	503-224-6655	**Fax:**	503-972-9115
Correspondent e-mail:	docketing@khpatent.com mandi@khpatent.com	**Correspondent e-mail Authorized:**	Yes

Domestic Representative

Domestic Representative Name:	David P. Cooper

Prosecution History

Date	Description	Proceeding Number
Aug. 10, 2021	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Aug. 09, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

TM Staff and Location Information

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*Formulated for dogs of all breeds, ages, & sizes

Large Bag ($48.95)	Standard Bag ($32.95)	Mini Bag ($14.95)
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*Formulated for dogs of all breeds, ages, & sizes

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120 Scoops	60 Scoops	21 Scoops

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*Formulated for dogs of all breeds, ages, & sizes

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120 Scoops

Standard Bag ($32.95)
60 Scoops

Clear

◉ One-time purchase
○ Subscribe and save 10%

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Formulated for digestive support to help your companion's immune system for optimal health.

Our Gut Health Supplement has no artificial fillers and is packed with fresh ingredients, such as Probiotics together with Prebiotics, Organic Kelp, Ginger Root, and Organic Icelandic Seaweed.

*Formulated for dogs of all breeds, ages, & sizes

Standard Bag ($32.95)
60 Scoops

- 1 +

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CALM SUPPLEMENT

Dedicated to supporting steady behavior to help your dog experience a more balanced day.

Our Calm Supplement has no artificial fillers and is packed with fresh ingredients, such as Probiotics together with Prebiotics, Ginger Root, Organic Kelp, Green Tea Extract, Organic Icelandic Seaweed, and L-Tryptophan.

*Formulated for dogs of all breeds, ages, & sizes

Standard Bag ($32.95)

60 Scoops

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO SUSPEND FOR CIVIL ACTION has been filed electronically using ESTTA and served by electronic mail upon the attorney for Opposer, this 6th day of April, 2022.

David P. Cooper
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520 S.Q. Yamhill St., Suite 300
Portland, Oregon 97204
cooper@khpatent.com

s/April L. Besl/
April L. Besl
Attorney for Applicant, *Happy Go Healthy, Ltd.*
Email: april.besl@dinsmore.com