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Filing date: **01/10/2024**

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	Worldwide Sport Nutritional Supplements Inc.
Granted to date of previous extension	01/10/2024
Address	500 7TH AVE., 9TH FLOOR NEW YORK, NY 10018 UNITED STATES

Correspondence information	NELS T. LIPPERT TARTER, KRINSKY & DROGIN 1350 BROADWAY NEW YORK, NY 10018 UNITED STATES Primary email: manageddocket@docket.tarterkrinsky.com Secondary email(s): nlippert@tarterkrinsky.com, kdelpilar@tarterkrinsky.com, enollet@tarterkrinsky.com 2122168000
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### Applicant information

Application no.	97823591	Publication date	09/12/2023
Opposition filing date	01/10/2024	Opposition period ends	01/10/2024
Applicant	Balanced Holdings, LLC 801 S. OLIVE ST #2306 LOS ANGELES, CA 90014 UNITED STATES		

### Goods/services affected by opposition

Class 005. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Gummy vitamins; Dietary supplements; Dietary supplements for human beings; Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary and nutritional supplements used for weight loss; Dietary food supplements; Food supplements; Food supplements, namely, anti-oxidants; Green coffee bean extracts for use as dietary supplements; Mineral dietary supplements; Nutraceuticals for use as a dietary supplement; Nutritional supplements; Nutritional supplements in the nature of nutritionally fortified soft chews; Nutritional supplements, namely, probiotic compositions; Vitamin supplements; Vitamin and mineral supplements; Weight management supplements
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### 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.	3937988	Application date	08/03/2010
Register	Principal		
Registration date	03/29/2011	Foreign priority date	NONE
Word mark	BALANCE		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: 1992 First Use In Commerce: 1992 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992 First Use In Commerce: 1992 Cereal-based, rice-based, or granola-based snack bars and snack foods		

U.S. registration no.	2745850	Application date	01/16/2001
Register	Principal		
Registration date	08/05/2003	Foreign priority date	NONE
Word mark	BALANCE		
Design mark			
Description of mark	NONE		
Goods/services	Class 029. First use: First Use: 1992 First Use In Commerce: 1992 Protein based, nutrient-dense snack bars		

U.S. registration no.	2659753	Application date	07/08/1997
Register	Principal		
Registration date	12/10/2002	Foreign priority date	NONE
Word mark	BALANCE BAR		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Jul 30, 1999 First Use In Commerce: Jul 30, 1999 nutritional food supplements		

U.S. registration no.	3036771	Application date	05/10/2004
Register	Principal		
Registration date	12/27/2005	Foreign priority date	NONE
Word mark	BALANCE BAR		
Design mark			
Description of mark	NONE		
Goods/services	Class 029. First use: First Use: Jul 2005 First Use In Commerce: Jul 2005		

	Protein-based, nutrient-dense snack bars
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Attachments	BalanceSphere Opposition.pdf(583779 bytes )
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Signature	/Nels T. Lippert/
Name	NELS T. LIPPERT
Date	01/10/2024

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

Trademark: BalanceSphere  
Application Serial No. 97823591  
Filing Date: March 5, 2023  
Published in the Official Gazette on  
September 12, 2023

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WORLDWIDE SPORT  
NUTRITIONAL SUPPLEMENTS,  
INC.

Opposer,

v.

BALANCED HOLDINGS, LLC

Applicant

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**NOTICE OF OPPOSITION**

Worldwide Sport Nutritional Supplements, Inc. (“Opposer”) believes that it will be damaged by the registration of the mark BalanceSphere as shown in the above-referenced trademark application for goods/services in International Class 5 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer is a Delaware Corporation located and doing business at 500 7<sup>th</sup> Avenue, New York, NY 10018.

2. Upon information and belief, Applicant, Balanced Holdings, LLC (“Applicant”) is a California Limited Liability Company located and doing business at 801 Olive Street, 2306, Los Angeles California 90014,

3. Applicant filed U.S. Trademark Application Serial No. 97823591 for the mark BalanceSphere on March 5, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C.

§1051(b). Applicant's application was published on September 12, 2023. Opposer obtained a ninety-day extension of time to an including January 10, 2014, within which to oppose Applicant's application.

4. Applicant's trademark application as published for the BalanceSphere mark recites goods in International Class 5 for "gummy vitamins; dietary supplements; dietary supplements for human beings; dietary and nutritional supplements; dietary and nutritional supplements for endurance sports; dietary and nutritional supplements used for weight loss; dietary food supplements; food supplements; food supplements, namely , anti-oxidants; green coffee bean extracts for use as dietary supplements; mineral dietary supplements; nutraceuticals for use as a dietary supplement; nutritional supplements; nutritional supplements in the nature of nutritionally fortified soft chews; nutritional supplements, namely, probiotic compositions; vitamin supplements; vitamin and mineral supplements; weight management supplements."

5. Since at least 1992 Opposer and its predecessors in interest have been engaged in the development and marketing of nutritional supplements for human consumption. In connection with this business, Opposer and its predecessors in interest created, adopted, and used the unique trademarks BALANCE and BALANCE BAR. From their creation, the BALANCE and BALANCE BAR brands became recognized as designating the goods of Opposer or its predecessors in interest.

6. As a direct result of the widespread promotion and recognition of Opposer's BALANCE and BALANCE BAR brands, its trademarks became well known.

7. Opposer owns U.S. Trademark Registration No.3,937,988 for the mark BALANCE in Class 5 for “Nutritional supplements; dietary food supplements” and Class 30 for “Cereal-based, rice-based, or granola-based snack bars and snack foods”. A copy of U.S. Registration No. 3.937,988 is attached hereto as Exhibit A. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

8. Opposer owns U.S. Trademark Registration No.2,745,850 for the mark BALANCE in Class 29 for “Protein based, nutrient-dense snack bars”. A copy of U.S. Registration No. 2.745,850 is attached hereto as Exhibit B. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

9. Opposer owns U.S. Trademark Registration No.2,659,753 for the mark BALANCE BAR in Class 5 for “nutritional food supplements”. A copy of U.S. Registration No. 2.659,753 is attached hereto as Exhibit C. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice .122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

10. Opposer owns U.S. Trademark Registration No.3,036,771 for the mark BALANCE BAR in Class 29 for “Protein based, nutrient-dense snack bars”. A copy of U.S. Registration No. 2.745,850 is attached hereto as Exhibit D. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice .122(d)(2) that it will rely

thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer's testimony period.

11. Opposer and its predecessors in interest have owned and continuously used the BALANCE and BALANCE BAR trademarks in U.S. commerce in connection with the promotion and sale of its nutritional supplements and protein-based snack bars prior to Applicant's constructive and/or actual first use date, if any, in United States Commerce.

12. Opposer's BALANCE and BALANCE BAR marks and Applicant's BalanceSphere mark are substantially similar in appearance, sound, and commercial impression. Furthermore, the Class 5 goods identified in Application Serial No. 97823591 and in Opposer's trademark registrations are identical or related and travel in the same channels of trade.

13. If Applicant is granted a registration for the mark herein opposed for goods in Class 5, it would obtain thereby, at least a *prima facie* exclusive right to use the mark. Such registration would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's BALANCE and BALANCE BAR marks, and any defect, fault, or deficiency in Applicant's goods could negatively reflect on Opposer's products. Therefore, a grant of registration of Applicant's mark for goods in Class 5 would be a source of damage and injury to Opposer.

14. Applicant's registration and use of the BalanceSphere mark for goods in Class 5 is likely to create confusion and deceive consumers into mistakenly believing that Applicant's goods and services originate with or are sponsored, endorsed, licensed, or authorized by Opposer, or are in some way associated with or connected to Opposer. Such confusion would irreparably harm and damage Opposer because it has no control over the nature or quality of the goods and services provided by Applicant under the BalanceSphere mark.

15. Registration should be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d), on the grounds that Applicant's BalanceSphere mark so resembles Opposer's BALANCE and BALANCE BAR marks as to cause confusion, mistake and/or deception, all to the damage of Opposer.

WHEREFORE, Opposer, by its undersigned attorneys, requests that its opposition to Application Serial No. 97823591 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.



Opposer appoints as its attorneys in this proceeding Nels T. Lippert of the firm Tarter Krinsky & Drogin LLC, 1350 Broadway, New York, New York 10018, to whom all correspondence in this proceeding should be addressed.

Dated: January 9, 2024

Respectfully submitted,  
Tarter Krinsky & Drogin LLC

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*Attorneys for Opposer  
Worldwide Sport Nutritional  
Supplements, Inc.*

# **Exhibit A**

# United States of America

United States Patent and Trademark Office

## BALANCE

**Reg. No. 3,937,988**

**Registered Mar. 29, 2011**

**Int. Cls.: 5 and 30**

**TRADEMARK**

**PRINCIPAL REGISTER**

BALANCE BAR COMPANY (DELAWARE CORPORATION)  
SUITE 202  
115 E. STEVENS AVENUE  
VALHALLA, NY 10595

FOR: NUTRITIONAL SUPPLEMENTS; DIETARY FOOD SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

FOR: CEREAL-BASED, RICE-BASED, OR GRANOLA-BASED SNACK BARS AND SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,636,101, 2,745,850, AND 2,868,192.

SER. NO. 85-099,089, FILED 8-3-2010.

SUSAN RICHARDS, EXAMINING ATTORNEY



*David J. Kyjnos*

Director of the United States Patent and Trademark Office

# **Exhibit B**

Int. Cl.: 29

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

**Reg. No. 2,745,850**

Registered Aug. 5, 2003

**TRADEMARK  
PRINCIPAL REGISTER**

**BALANCE**

BALANCE BAR COMPANY (DELAWARE COR-  
PORATION)  
THREE LAKES DRIVE  
NORTHFIELD, IL 600932753

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

SER. NO. 76-194,400, FILED 1-16-2001.

FOR: PROTEIN BASED, NUTRIENT-DENSE  
SNACK BARS, IN CLASS 29 (U.S. CL. 46).

JULIA HARDY COFIELD, EXAMINING ATTOR-  
NEY

# **Exhibit C**

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**United States Patent and Trademark Office**

**Reg. No. 2,659,753**

**Registered Dec. 10, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**BALANCE BAR**

BALANCE BAR COMPANY (DELAWARE CORPORATION)  
THREE LAKES DRIVE  
NORTHFIELD, IL 60093 BY CHANGE OF NAME  
BIO-ENGINEERED FOODS, INC. (DELAWARE CORPORATION) CARPINTERIA, CA 93013

FOR: NUTRITIONAL FOOD SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 7-30-1999; IN COMMERCE 7-30-1999.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAR", APART FROM THE MARK AS SHOWN.

SN 75-321,186, FILED 7-8-1997.

JULIA HARDY COFIELD, EXAMINING ATTORNEY

# **Exhibit D**



Int. Cl.: 29

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

**Reg. No. 2,745,850**

Registered Aug. 5, 2003

**TRADEMARK  
PRINCIPAL REGISTER**

**BALANCE**

BALANCE BAR COMPANY (DELAWARE COR-  
PORATION)  
THREE LAKES DRIVE  
NORTHFIELD, IL 600932753

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

SER. NO. 76-194,400, FILED 1-16-2001.

FOR: PROTEIN BASED, NUTRIENT-DENSE  
SNACK BARS, IN CLASS 29 (U.S. CL. 46).

JULIA HARDY COFIELD, EXAMINING ATTOR-  
NEY