

ESTTA Tracking number: **ESTTA294472**

Filing date: **07/09/2009**

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	Johnson & Johnson		
Entity	Corporation	Citizenship	New Jersey
Address	One Johnson & Johnson Plaza New Brunswick, NJ 08933-7001 UNITED STATES		
Attorney information	Norm D. St Landau Drinker Biddle & Reath LLP 1500 K Street, N.W., Ste. 1100 Washington, DC 20005-1209 UNITED STATES dctrademarks@dbr.com, jaye.campbell@dbr.com Phone:202-842-8800		

Applicant Information

Application No	77622662	Publication date	06/09/2009
Opposition Filing Date	07/09/2009	Opposition Period Ends	07/09/2009
Applicant	Olnatura, Inc. Suite 4C 494 W. Boughton Rd. Bolingbrook, IL 60440 UNITED STATES		

Goods/Services Affected by Opposition

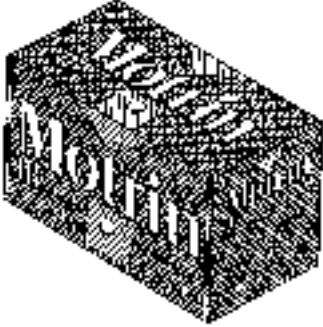
<p>Class 005. First Use: 2007/06/01 First Use In Commerce: 2007/06/01 All goods and services in the class are opposed, namely: Homeopathic pharmaceuticals for use in the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical preparations and substances for the treatment of gastro-intestinal diseases; Pharmaceutical preparations for the prevention of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical preparations for the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; Pharmaceutical products for the treatment of viral and infectious diseases, for the treatment of cancer</p>
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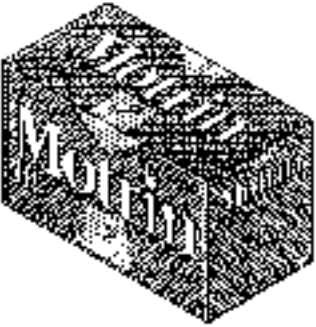
Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	904181	Application Date	06/24/1970
Registration Date	12/15/1970	Foreign Priority Date	NONE
Word Mark	MOTRIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U018 (International Class 005). First use: First Use: 1970/04/13 First Use In Commerce: 1970/04/13 ANTIINFLAMMATORY AGENT		

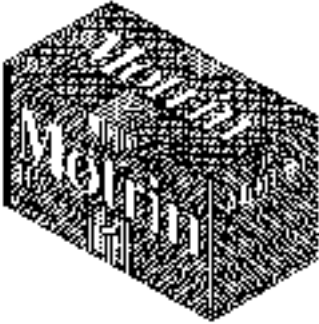
U.S. Registration No.	2371519	Application Date	02/13/1998
Registration Date	07/25/2000	Foreign Priority Date	NONE
Word Mark	MOTRIN IB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/12/23 First Use In Commerce: 1998/12/23 PHARMACEUTICAL PREPARATIONS- NAMELY, ANALGESICS		

U.S. Registration No.	2390239	Application Date	02/13/1998
Registration Date	09/26/2000	Foreign Priority Date	NONE
Word Mark	MOTRIN IB		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/09/25 First Use In Commerce: 1998/09/25 PHARMACEUTICAL PREPARATIONS- NAMELY, ANALGESICS

U.S. Registration No.	2371520	Application Date	02/13/1998
Registration Date	07/25/2000	Foreign Priority Date	NONE

Word Mark	MOTRIN IB
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/10/15 First Use In Commerce: 1998/10/15 PHARMACEUTICAL PREPARATION, NAMELY, ANALGESICS

Attachments	75433860#TMSN.gif (1 page)(bytes) 75433872#TMSN.gif (1 page)(bytes) 75433948#TMSN.gif (1 page)(bytes) MODIN opposition.pdf (11 pages)(509421 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jaye S. Campbell/
Name	Jaye S. Campbell
Date	07/09/2009

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

**In re Ser. No. 77/622,662 – MODIN
Published: June 9, 2009**

JOHNSON & JOHNSON,	:	
Opposer,	:	
v.	:	Opposition No. 91-_____
OLNATURA, INC.,	:	
Applicant.	:	

NOTICE OF OPPOSITION

JOHNSON & JOHNSON, a New Jersey corporation, having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 (“Opposer”), believes that it will be damaged by the registration of Ser. No. 77/622,662 – MODIN for “homeopathic pharmaceuticals for use in the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations and substances for the treatment of gastro-intestinal diseases; pharmaceutical preparations for the prevention of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical preparations for the treatment of colds, influenza, viral infections, gastrointestinal infections, appetite loss, allergies, and immune system deficiencies; pharmaceutical products for the treatment of viral and infectious diseases, for the treatment of cancer” in Class 5; filed on November 26, 2008 by Olnatura, Inc., an Illinois corporation, having an address at 494 W.

Boughton Rd., Suite 4C, Bolingbrook, Illinois 60440 (“Applicant”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for its opposition, Opposer states:

1. Opposer, through its wholly-owned subsidiary, has adopted and is using the MOTRIN, MOTRIN IB, CHILDREN’S MOTRIN, and CHILDREN’S MOTRIN COLD marks, and variations thereof (herein the “MOTRIN Marks”) for a range of pain-relief products, including products for treating cold and flu symptoms.

2. Opposer, through its wholly-owned subsidiary, has been continuously using the MOTRIN Marks for pain-relief and cold-relief products since as early as 1970.

3. To protect its rights in the MOTRIN Marks, Opposer owns:

- a. Reg. No. 904,181 – MOTRIN for “ant inflammatory agent” in Class 5; registered December 15, 1970, with a claim of use since April 13, 1970.
- b. Reg. No. 2,371,519 – MOTRIN IB & Design for “pharmaceutical preparations, namely, analgesics” in Class 5; registered July 25, 2000, with a claim of use since December 23, 1998.
- c. Reg. No. 2,390,239 – MOTRIN IB & Design for “pharmaceutical preparations- namely, analgesics” in Class 5; registered September 26, 2000, with a claim of use since September 25, 1998.
- d. Reg. No. 2,371,520 – MOTRIN IB & Design for “pharmaceutical preparations- namely, analgesics” in Class 5; registered July 25, 2000, with a claim of use since October 15, 1998.

Copies of the foregoing registrations are attached hereto as Exhibits A-D.

Count I: Likelihood of Confusion

4. Since before the November 26, 2008 filing date of Ser. No. 77/622,662 – MODIN, Opposer, through its wholly-owned subsidiary, has sold millions of dollars of pain-relief and cold-relief products identified by the MOTRIN Marks.

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