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LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2020 TMOB 21**

**Date of Decision: 2020-02-27**

**IN THE MATTER OF AN OPPOSITION**

**Vital Source Inc.**

**Opponent**

**and**

**Vital Life Pharmaceutical Inc.**

**Applicant**

**1,748,997 for Vital Life & Design**

**Application**

INTRODUCTION

[1] Vital Source Inc. (the Opponent) opposes registration of the trademark Vital Life & Design (the Mark), set out below, that is the subject of application No. 1,748,997 that was filed by Vital Life Pharmaceutical Inc. (the Applicant).



**VITAL LIFE**

[2] Filed on October 5, 2015, the application is based on use of the Mark in Canada in association with the following goods: “ginseng capsules for general health and well-being; herbal supplements for general health and well-being; nutritional supplements for general health and

well-being; pharmaceutical products for skin care for animals; natural plants” and the following services: “research and development of new products for others” since October 1, 2015. The application was advertised in the *Trademarks Journal* of October 19, 2016.

[3] The Opponent alleges that (i) the application does not conform to several requirements under section 30 of the *Trademarks Act*, RSC 1985, c T-13 (the Act); (ii) the Mark is not registrable under section 12(1)(b) of the Act; (iii) the Mark is not registrable under section 12(1)(d) of the Act; (iv) the Applicant is not the person entitled to the registration of the Mark under section 16 of the Act, and (v) the Mark is not distinctive under section 2 of the Act.

[4] As a preliminary matter, I note that the Act was amended on June 17, 2019. All references in this decision are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act as it read before it was amended (see section 70 of the Act which provides that section 38(2) of the Act as it read prior to June 17, 2019 applies to applications advertised prior to that date).

[5] For the reasons that follow, I reject the opposition.

#### THE RECORD

[6] The Opponent filed its statement of opposition on March 20, 2017. The Applicant filed and served its counter statement on May 30, 2017 denying all of the grounds of opposition.

[7] In support of its opposition, the Opponent filed the affidavit of Rentaro Burress, assistant employed by the Opponent’s trademark agent.

[8] In support of its application, the Applicant filed the affidavit of Younan Chu, manager of the Applicant, as well as the affidavit of Alison Roberts, legal assistant employed by the Applicant’s trademark agent. The Registrar subsequently granted leave for the Applicant to file a supplemental affidavit of Alison Roberts.

[9] None of the parties’ affiants were crossed-examined.

[10] Only the Applicant filed a written argument. Neither party requested a hearing.

## THE PARTIES' RESPECTIVE BURDEN OR ONUS

[11] The Applicant bears the legal onus of establishing, on a balance of probabilities that the application complies with the requirements of the Act. This means that if a determinate conclusion cannot be reached in favour of the Applicant after a consideration of all of the evidence, then the issue must be decided against the Applicant. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

## ANALYSIS

[12] At the outset of my analysis, I would note that the only evidence submitted by the Opponent consists of Mr. Burress' online search of the Applicant's web presence in September 2017, which led him to the Applicant's website located at *vitallifepharmaceutical.com*. Attached to Mr. Burress' affidavit are printouts from the said website. Printouts of the same webpages accessed in January 2018 are reproduced as Exhibit H to Mr. Chu's affidavit, submitted as part of the Applicant's evidence. I note that the printouts from Mr. Burress' affidavit appear to be of better quality than those submitted by Mr. Chu given that some images appear to be missing in the latter document. Even so, I fail to see how this evidence could be of assistance to the Opponent as it does not enable the Opponent to meet its initial evidential burden with respect of any of its grounds of opposition. Considering that I do not have the benefit of the Opponent's submissions in this proceeding, I will not be referring to Mr. Burress' affidavit in the rest of my decision in view of its lack of relevance.

[13] I will now consider each of the grounds of opposition.

### Section 30 Grounds Dismissed

[14] The Opponent pleads that the application does not conform to sections 30(a), 30(b) and 30(i) of the Act. The material date for assessing a section 30 ground is the filing date of the application, namely October 5, 2015 [see *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475].

*Section 30(a) of the Act*

[15] The Opponent alleges that the application does not comply with section 30(a) of the Act because it does not contain a statement in ordinary commercial terms of the specified goods and services set out in the application. The Opponent did not refer to any evidence nor present any arguments in support of this ground of opposition. The section 30(a) ground is therefore summarily dismissed for the Opponent's failure to satisfy its initial evidential burden.

*Section 30(b) of the Act*

[16] The Opponent alleges that the application does not comply with section 30(b) of the Act because the application does not include the correct date from which the Applicant or its named predecessors in title, in any, have so used the Mark in association with each of the goods and services set out in the application.

[17] There is an initial evidential burden on the opponent to adduce sufficient evidence to support its allegation of the application's non-conformity to section 30(b) of the Act, bearing in mind that the facts regarding the applicant's first use are particularly within the knowledge of the applicant [see *Tune Masters v Mr P's Mastertune Ignition Services Ltd* (1996), 10 CPR (3d) 84 (TMOB) at 89 and *Corporativo de Marcas GJB, SA de CV v Bacardi & Company Ltd* 2014 FC 323]. If the opponent succeeds in discharging its initial evidential burden, the applicant must then, in response, substantiate its claim of use during the material time.

[18] The Opponent did not refer to any evidence nor present any arguments in support of this ground of opposition. The section 30(b) ground is therefore summarily dismissed for the Opponent's failure to satisfy its initial evidential burden.

*Section 30(i) of the Act*

[19] The Opponent alleges that the application does not comply with section 30(i) of the Act because the Applicant could not have been satisfied that "it is entitled to register the Mark in Canada" in view of the prior use in Canada and/or making known in Canada by the Opponent, or its predecessor(s) in title, of the Opponent's registered trademarks VITAL SOURCE & Design (TMA922,189) and VITAL SOURCE (TMA922,191). In its statement of opposition, the

Opponent alleges that its registered trademarks have been used in Canada since March 1, 2011, that it has established significant public recognition for them, and that the trademarks have become well-known in the field of vitamins and supplements including herbal supplements for general health and well-being and nutritional supplements for general health and well-being.

[20] Section 30(i) of the Act requires an applicant to declare in the application that it is satisfied that it is entitled to use the trademark in Canada. Where an applicant has provided the required statement, the Registrar has previously found that an applicant has failed to substantively comply with section 30(i) where, for example:

- there is evidence of bad faith on the part of the applicant [see *Sapodilla Co Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155] which has been found where a licensee or distributor has attempted to register their principal's trade-mark or a confusingly similar variant [see *Suzhou Parsun Power Machine Co. Limited v Western Import Manufacturing Distribution Group Limited*, 2016 TMOB 26; *Flame Guard Water Heaters, Inc v Usines Giant Inc*, 2008 CanLII 88292; see also *McCabe v Yamamoto & Co (America) Inc* (1989), 23 CPR (3d) 498 at 503 (FCTD)];
- there is evidence of a prima facie case of non-compliance with a federal statute such as the *Copyright Act* RSC 1985, c C-42 or *Food and Drugs Act*, RSC 1985, c F-27 [see *Interactiv Design Pty Ltd v Grafton-Fraser Inc* (1998), 87 CPR (3d) 537 (TMOB) at 542-543]; and
- there is evidence that a contractual relationship such as licensor-licensee existed and that the registration of a trade-mark would constitute a breach of the relationship [see *AFD China Intellectual Property Law Office v AFD China Intellectual Property Law (USA) Office, Inc*, 2017 TMOB 30].

[21] In the present case, the Opponent did not refer to any evidence nor present any arguments in support of its allegations set out in this ground of opposition. The section 30(i) ground of opposition is therefore summarily dismissed for the Opponent's failure to meet its initial evidential burden.

### Sections 16(1)(a) and 16(1)(c) Grounds Dismissed

[22] The Opponent alleges that the Applicant is not the person entitled to registration of the Mark pursuant to sections 16(1)(a) and (1)(c) of the Act, on the ground that it is confusing with the Opponent's registered trademarks VITAL SOURCE & Design (TMA922,189) and VITAL SOURCE (TMA922,191) which have been previously used or made known in Canada, and with the Opponent's trade name "Vital Source" which has been previously used in Canada.

[23] The material date for considering this ground of opposition is the claimed date of first use of the subject application, namely October 1, 2015.

[24] Since there is no evidence of prior use or of making known of any of the Opponent's trademarks or of its trade name, the grounds of opposition based on sections 16(1)(a) and 16(1)(c) of the Act are summarily dismissed for the Opponent's failure to meet its initial evidential burden.

### Section 12(1)(b) Ground Dismissed

[25] The Opponent alleges that the application is not registrable under section 12(1)(b) of the Act since the Mark is clearly descriptive or deceptively misdescriptive of the character or quality of the goods or services in association with which it is allegedly used and has not been so used in Canada as to have become distinctive at the material date. The Opponent provided no additional information with respect to this ground of opposition in its statement of opposition.

[26] Moreover, the Opponent did not refer to any evidence nor present any arguments in support of its allegation. The section 12(1)(b) ground is therefore summarily dismissed for the Opponent's failure to satisfy its initial evidential burden.

### Section 2 Ground Dismissed

[27] The Opponent alleges that the Mark is not distinctive of the goods and services of the Applicant since it does not actually distinguish, nor is it adapted to distinguish, the goods or services in association with which it is intended to be used from the goods and services

associated with the Opponent's registered trademarks VITAL SOURCE & Design (TMA922,189) and VITAL SOURCE (TMA922,191).

[28] The material date for assessing distinctiveness is generally accepted as being the date of filing of the opposition, which is March 20, 2017 in this case [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 2004 FC 1185 (CanLII), 34 CPR (4th) 317 (FCTD)].

[29] In order to meet its initial burden with respect to the non-distinctiveness ground of opposition, the Opponent is required to show that one or more of its trademarks had become known sufficiently in Canada, as of the filing date of the statement of opposition, to negate the distinctiveness of the Applicant's Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[30] The Opponent did not refer to any evidence that demonstrates the extent to which one or more of its trademarks had become known in Canada nor present any arguments in support of this ground of opposition. The section 2 ground is therefore summarily dismissed for the Opponent's failure to satisfy its initial evidential burden.

#### Section 12(1)(d) Ground Rejected

[31] In its statement of opposition, the Opponent alleges that the Mark is not registrable pursuant to section 12(1)(d) of the Act on the ground that it is confusing with the Opponent's registered trademarks VITAL SOURCE & Design (TMA922,189), set out below, and VITAL SOURCE (TMA922,191), the particulars of which are reproduced in Schedule "A" to this decision.



[32] The material date for considering this issue is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[33] An opponent's initial onus is met with respect to a section 12(1)(d) ground of opposition if the registration(s) relied upon is(are) in good standing. In this regard, the Registrar has the discretion to check the register in order to confirm the existence of the registration(s) relied upon by an opponent [see *Quaker Oats of Canada Ltd/La Compagnie Quaker Oats du Canada Ltée v Menu foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Having exercised the Registrar's discretion, I confirm that registration Nos. TMA922,189 and TMA 922,191 are in good standing.

[34] Since the Opponent has satisfied its initial evidential burden for this ground of opposition, the issue becomes whether the Applicant has met its legal burden to establish, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's registered trademarks.

[35] For the reasons that follow, this ground of opposition is rejected.

[36] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act provides that use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.

[37] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trademarks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al*, 2006 49 CPR (4th) 401 (SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC)].

[38] I will now turn to the assessment of the section 6(5) factors.



*Section 6(5)(a) - the inherent distinctiveness of the trademarks and the extent to which they have become known*

[39] The Mark consists of a design that could be seen as a pair of wings or a couple of stylized long leaves inside a circle, followed by the English words “vital” and “life” below the design. In comparison, the Opponent’s registered trademark No. TMA922,189 consists of a shamrock, followed by the English words “vital” and “source” below the design. Trademark No. TMA922,191 consists simply of the words “vital” and “source”.

[40] In its written argument, the Applicant submits that both parties’ trademarks have a similar degree of inherent distinctiveness. Pointing to definitions from the *Merriam-Webster* online dictionary submitted as Exhibit FF to the Roberts Affidavit, the Applicant states that when viewed in association with the applied for goods and services, the Mark suggests that the supplements are “of utmost importance to living” while the Opponent’s marks suggest that their supplements stem “from a source of utmost importance”.

[41] I do not consider the expressions “vital life” and “vital source” to be particularly distinctive given their suggestive nature when viewed in association with parties’ goods and services as something that is essential to life and something from a source that is essential. I am however of the view that the figurative elements contribute significantly to the inherent distinctiveness of the Mark and of VITAL SOURCE & Design (TMA922,189).

[42] As such, when the Mark is compared with the Opponent’s registered trademark VITAL SOURCE & Design (TMA922,189), I assess both parties’ marks to have a similar degree of inherent distinctiveness as they are both composed of a distinctive figurative element followed by suggestive words. When compared with the Opponent’s registered word mark VITAL SOURCE (TMA922,191), I assess the Mark to have a higher degree of inherent distinctiveness in view of the distinctive figurative element.

[43] The strength of a trademark may be increased by means of it becoming known in Canada through promotion or use. In the present case, only the Applicant provided evidence in support of its trademark.

[44] In his affidavit, Mr. Chu states that incorporated in Ontario, the Applicant is in the business of formulating, testing for purity, manufacturing and packaging of herbal and nutritional supplements, as well as skin cream for pain relief for humans and animals, for sale and distribution in Canada in association with the Mark. Mr. Chu further states that the Applicant also formulates, tests for purity, and packages nutritional supplements in Canada for sale and distribution by third parties.

[45] In terms of use of the Mark in association with the Applicant's own products, Mr. Chu states that the Applicant began selling supplements and pain relief skin cream in association with the Mark in Canada early 2015. Attached as Exhibit A are photos of sample products sold by the Applicant in Canada. Bottles marked as "Panax Ginseng", "Joint Care ++", "Cordyceps", "Atlantic Seal Oil", "Milkthistle", and "Flaxseed Oil" can be seen in the photos. I note that with the exception of the bottles for "Cordyceps" and "Flaxseed Oil" where the Mark appears as filed on the labels, the remaining bottles bear a variation of the Mark where the design is followed by the words VITAL LIFE on the same row. For these instances, I am satisfied that the Mark is being used in such a way that it has not lost its identity and remains recognizable despite the minor deviation [see *Canada (Registrar of Trade Marks) v Cie internationale pour l'informatique CII Honeywell Bull, SA* (1985), 4 CPR (3d) 523 (FCA) and *Promafil Canda Ltée v Munsingwear Inc* (1992), 44 CPR (3d) 59 (FCA)].

[46] Printouts from the Applicant's website showing photos of additional products sold by the Applicant in association with the Mark are attached as Exhibit B. I note that the Mark and variation of the Mark as described in the previous paragraph can be seen on bottles marked as "Antrodia Cinnamomea", "Fish Oil", "Moringa", and "Vitamin D3".

[47] Attached as Exhibits C and D are 12 sample invoices for the sale of "seal oil", "ginseng", "moringa", "pain relief skin cream", "cordyceps", "vitamin D3", and other products, dated between February 2, 2015 and October 5, 2017 addressed to entities in Canada. I note that the Mark appears at the top left corner of all the sample invoices, along with the Applicant's contact information.

[48] In terms of use of the Mark in association with "research and development of new products for others", Mr. Chu states that the Applicant began formulating, testing for purity,

packaging and labelling third party supplements in Canada for sale and distribution by third parties in mid-2015. Attached as Exhibits E and F are 10 sample invoices for services identified as “testing”, “labelling”, “packaging”, “encapsulation”, and “bottling” of supplements, dated between April 8, 2015 and September 28, 2017, addressed to entities in Canada. I note that the Mark appears at the top left corner of all the sample invoices, along with the Applicant’s contact information. Photos of the third parties products prepared by the Applicant are attached as Exhibit G.

[49] According to Mr. Chu, from February 2015 to December 2017, the Applicant’s sale of its own products and of its services for third parties in association with the Mark totaled over \$350,000.

[50] In terms of promotion of the Mark, Mr. Chu states that the Applicant has advertised its goods and services via its website and Facebook. Attached as Exhibit H are copies of the Applicant’s web pages located at *vitallifepharmaceutical.com* as they appear at the time that the affidavit was being prepared. I accept these printouts as evidence of the manner in which the Mark appeared online on January 30, 2018. However, I do not have any information regarding the Applicant’s website nor the number of people who have accessed it. Attached as Exhibit I are printouts from the Applicant’s Facebook page as they appear at the time that the affidavit was being prepared. I note that there are posts from May 2016 with photos of bottles of “Cordyceps”, “Femnex”, “Atlantic Seal Oil” and “Deep Sea Fish Oil”. Given the relatively small sizes of the photos on the printouts, I am unable to determine the manner in which the Mark appears on the bottles.

[51] Mr. Chu further states that the Applicant also advertises through product flyers that are distributed to customers and potential customers. Attached as Exhibit K are sample flyers used by the Applicant in 2016 and 2017. I note that the Mark and variation of the Mark as described above appear on the bottles identified as “Atlantic Seal Oil”, “Cordyceps”, “Joint Care++”, “Femnex”, “Ginseng Veg Capsule” and “Flaxseed Oil Softgel” in the sample flyers. Once again, the Applicant did not provide any distribution figures related to the Applicant’s flyers, as such, I am unable to assess the extent to which the Mark was advertised through flyers.

[52] In the end, bearing in mind the inherent distinctiveness of the parties' marks, in view of the Applicant's evidence of use of the Mark in association with its goods and services and in the absence of any evidence of use or promotion of the Opponent's trademarks, the 6(5)(a) factor favours the Applicant.

*Section 6(5)(b) - the length of time the trademarks have been in use*

[53] The application for the Mark is based upon use in Canada since October 1, 2015 and as per my review of the Chu Affidavit, I am satisfied that the Applicant has shown use of the Mark in association with the applied for goods and services since at least that time.

[54] In comparison, each of the Opponent's registrations No. TMA922,189 and TMA922,191 claims use of the trademark in Canada since March 1, 2011. However, the Opponent did not provide any evidence of actual use of the marks. As such, I am unable to make any assessment regarding their use within the meaning of the Act.

[55] Under these circumstances, the section 6(5)(b) factor favours the Applicant.

*Sections 6(5)(c) and (d) - the nature of the goods, services, business and trade*

[56] When considering sections 6(5)(c) and (d) of the Act, the statements of goods and services as defined in the application for the Mark and in the Opponent's registrations govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)].

[57] The Opponent's trademarks VITAL SOURCE & Design and VITAL SOURCE are registered for use in association with vitamins, a variety of mineral, herbal, food, and protein supplements, as well as the custom manufacturing and packaging of those. The Opponent has not provided any evidence of the actual trade it is engaged in.

[58] In comparison, the Mark is applied for use in association with ginseng capsules, herbal supplements, nutritional supplements, pharmaceutical products for skin care of animals, natural plants, as well as "research and development of new products for others". In its written

argument, the Applicant submits that its applied for goods and services are “essentially the same” as the Opponent’s registered goods and services. In terms of the nature of the trade, the Applicant points to the sample invoices attached to the Chu Affidavit as evidence of its wholesale business, and its provision of services to other distributors of herbal and nutritional supplements.

[59] In the end, there is clear overlap between some of the parties’ goods and services while others appear to be closely related as both are in the business of herbal and nutritional supplements. In addition, neither the Opponent’s registrations nor the subject application contains any restriction on the parties’ channels of trade. Given that the parties’ goods and services clearly overlap or are closely related, for the purpose of assessing confusion, I conclude that there is potential for overlap between the parties’ channels of trade.

[60] Accordingly, these two factors favour the Opponent.

*Section 6(5)(e) - the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them*

[61] When considering the degree of resemblance, the law is clear that the trademarks must be considered in their totality. It is not correct to lay them side by side and compare and observe similarities or differences among the elements or components of the trademarks.

[62] In its written argument, the Applicant submits that the only similarity in appearance between the parties’ marks is the word “vital”. As mentioned above, the Applicant also submits that when viewed in association with the applied for goods and services, the Mark suggests that the supplements are “of utmost importance to living” while the Opponent’s marks suggest that their supplements stem “from a source of utmost importance”. As such, the Applicant contends that there is little resemblance in the ideas suggested by the parties’ marks.

[63] There is necessarily some degree of resemblance between the parties’ marks owing to the use of the term “vital”, which is the first portion of the Opponent’s word mark VITAL SOURCE, and the first portion of the written component of the Mark and of the Opponent’s trademark VITAL SOURCE & Design. While the first portion of a mark has at times been considered the

most important for purposes of distinguishing between marks [see *Conde Nast Publications v Union des Editions Modernes* (1979), 46 CPR (2d) 183 at 188 (FCTD)], it is nevertheless possible to focus on particular features of a mark that may have a determinative influence on the public's perception of it [see *United Artists Corp v Pink Panther Beauty Corp* (1998), 80 CPR (3d) 247 at 263 (FCA)]. In the present case, I do not consider the term "vital" to be the most particular feature of any of the marks in question given its suggestive nature that the parties' goods and services are essential.

[64] Instead, I am of the view that the figurative element of the Opponent's VITAL SOURCE & Design trademark and that of the Mark, to be the particularly striking or unique component in each case. The figurative elements are visually different as the Opponent's mark includes a shamrock design, while the Mark includes a design that could be seen as a pair of wings or a couple of stylized thin long leaves inside a circle. In the case of the Opponent's word mark VITAL SOURCE, I do not consider either word to be particularly striking or unique given that these are ordinary words in the English language that are suggestive of the Opponent's goods and services.

[65] I am also of the view that there are some similarities in ideas suggested in view of the use of the term "vital". The Opponent's trademarks evoke the idea that it is an essential source of vitamins and supplements or that the products are from an essential source while the Mark evokes the idea that its health products and services are essential to life.

[66] Overall, this factor slightly favours the Opponent.

*Additional surrounding circumstance - State of the marketplace evidence*

[67] In its written argument, the Applicant submits that one additional surrounding circumstance in this case is that the word "vital" has been commonly adopted in the herbal and dietary supplements trade as suggestive of good health. Citing *Kellogg Salada Canada Inc v Canada (Registrar of Trade Marks)*, [1992] 3 FC 442 (FCA), the Applicant contends that this is a case where the presence of a common element causes purchasers to pay more attention to the other features of the marks and to distinguish between them by those features. In support, the Applicant points to the Roberts Affidavit and the Supplemental Roberts Affidavit for evidence of

use of the word “vital” in the marketplace and on the register in the herbal and nutritional supplements industry.

Fox on Trade-Marks and Case Law

[68] In A Kelly Gill, *Fox on Canadian Law of Trade-Marks and Unfair Competition*, 4th ed, (Toronto: Thomson Reuters Canada, 2002), ch 8 at s 8.6(f) (WL Can), the editors state the following with respect to “Common or Descriptive Words”:

In considering the possibility of confusion between any two trade-marks, it is a well recognized principle that, where those two marks contain a common element that is also contained in a number of other marks in use in the same market, such a common occurrence in the market tends to cause purchasers to pay more attention to the other or non-common features of the respective marks and to distinguish between them by those other features. This principle, however, requires that the marks comprising the common elements shall be in fairly extensive use in the market in which the marks under consideration are being used or will be used. As stated in *Harrods Ltd. 's Application* [(1935), 52 RPC 65]:

Now it is a well recognized principle, that has to be taken into account in considering the possibility of confusion arising between only two trade marks, that, where those two trade marks contain a common element which is also contained in a number of other trade marks in use in the same market, such a common occurrence in the market tends to cause purchasers to pay more attention to the other features of the respective marks and to distinguish between them by those other features.

Thus, if that part of the mark that was taken is common to trade, little weight is to be given this factor, since it does not materially contribute to the distinctiveness of the mark. If, on the other hand, the taken part is not that which is common to the trade, the degree of resemblance is heightened. For example, as was recently stated by Justice Mactavish [in *Clarnet Communications Inc v Orange Personal Communications Services Ltd* (1985), 39 CPR (4th) 389 (FC) at para 85, affirmed 47 CPR (4th) 249, 2005 FC 590 (FCA)], “... in general, the first component of a mark will often be considered to be the most important, but where that portion is common to the trade, or is descriptive or suggestive, the significance of the first component decreases.” But as stated previously, the analysis must always be of the marks in their totality, without dissection of any elements that may be common to the trade.

[69] State of the register evidence is often introduced to show the commonality of a trademark or portion of a trademark in relation to the register as a whole. However, the evidence is only relevant insofar as inferences may be made with respect to the state of the marketplace. The

inferences being that at a particular relevant date, the common element in question is in fairly extensive use in the market in which the trademarks under consideration are being used or will be used such that consumers will distinguish the trademarks by paying more attention to other features [see *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD); *Kellogg Salada Canada*].

[70] Such inferences can only be drawn when a significant number of pertinent registrations are located [see *Alticor Inc v Nutravite Pharmaceuticals Inc* 2003 FCT 718]. In affirming the Supreme Court of Canada's decision in *Pepsi-Cola Co v Coca-Cola Co* [1940] SCR 17, the Privy Council referred to 20 third party trademarks registered in Canada from 1920 to 1930 in connection with beverages, containing the term "cola" or "kola", as evidence that the word "cola" "is a word in common use in Canada in naming beverages". As such, "the proper comparison must be made with that fact in mind" [see *Coca-Cola Co v Pepsi-Cola Co* [1942] 2 DLR 657 paras 14 to 18].

[71] In *Park Avenue Furniture*, the Federal Court of Appeal pointed to seven third party trademarks registered in Canada in connection with linens and household furnishings containing the term "beauty", shown to have been used by such owners, as evidence that the word "beauty" is common to the trade, thus "open to the trade to use" [p. 428].

[72] In the following year, the Federal Court of Appeal would once again discuss the probative value of evidence purported to establish common usage of a term in the trade in *Kellogg Salada Canada*. In this case, the Court referred to over 47 registered trademarks and 43 trade names incorporating the term "nutri" as evidence that the word "nutri" "has been commonly adopted in the food trade as suggestive of a desirable attribute of foods, particularly health foods". As such, "it may be inferred that consumers of these products are accustomed to making fine distinctions between the various 'Nutri' trade marks in the marketplace, by paying more attention to any small differences between marks" [para 15].

[73] While these earlier decisions from the Privy Council, the Supreme Court of Canada and the Federal Court of Appeal accepted evidence of widely varying numbers of third party registrations and trade names as evidence of common adoption of an element in the marketplace, with or without evidence of actual use, several recent decisions from the Federal Court appear to



have shifted the focus to evidence of actual use in the marketplace, suggesting that it might be difficult to establish common adoption by merely relying on inferences that can be made from lists of registered trademarks and trade names.

[74] In *Hawke & Company Outfitters LLC v Retail Royalty Company*, 2012 FC 1539, de Montigny J. (as he then was) stated that “the exact number of similar marks necessary to establish that an element of a mark was commonly adopted as a component of trade-marks used in association with the relevant wares or services at the material date [...] likely depends on the facts of a given case” [para 44]. He explained the difficulty with the state of the register evidence as follows : “[A] search of the Trade-marks Office Register is not the best way to establish the state of the marketplace or the actual use of a mark. The fact that a mark appears on the register does not show that it is currently in use, was in use as of the relevant material dates, is used in relation to wares or services similar to those of the parties, or the extent of any such use [...]” [para 40].

[75] In *Canada Bread Company, Limited v Dr Smood ApS*, 2019 FC 306, having reproduced the quote above, Roy J. noted that two other Federal Court decisions [*McDowell v Laverana GmbH & Co KG* 2017 FC 327 and *McDowell v The Body Shop International PLC*, 2017 FC 581] agreed with de Montigny J.’s observations in the Hawke decision where “the evidence of the use of a common element becomes relevant only where the registered marks are commonly used in the market in question”. He added that “it remains very much unclear what inference may legitimately be drawn without evidence of the use made by third parties in the marketplace of a common element” [para 61].

[76] Examples of evidence of actual use of a common element that have been discussed by the Federal Court include phone directories showing trade names of businesses in Canada, websites from which Canadians can order relevant products, purchase of relevant products in Canada [see *Alticor*], online advertising and sample flyers [see *Clearnet Communications*], websites showing trademarks of businesses operating in the same field [see *Ecletic Edge Inc v Victoria’s Secret Store Branch Management, Inc* 2015 FC 453], and information about the annual sales of the goods [see *Hawke & Company Outfitters*].

[77] However, all evidence of actual use is not made equal. In *Ecletic Edge Inc v Gildan Apparel (Canada) LP* 2015 FC 1332, the Court cautioned that “it is not the quantity or sheer numbers that count but rather the quality of evidence showing actual use of the common [element] in the relevant industry in Canada” [para 91]. By way of examples, websites that are inactive or inaccessible to Canadians, the inclusion of marks registered with unrelated categories of goods and services, the lack of information about sales and/or operations in Canada, and evidence of enforcement actions, oppositions, or settlements that would have discontinued the use of the common element by third parties in the marketplace, could all impact the probative value of the evidence in question [see *Vivat Holdings Ltd v Levi Strauss & Co*, 2005 FC 707 and *Ecletic Edge Inc v Gildan Apparel (Canada) LP*].

[78] I now turn to the evidence presented by the Applicant in the Roberts Affidavits.

#### The Roberts Affidavits

[79] In her affidavit, Ms. Roberts explains that she was instructed to visit Amazon’s website at *www.amazon.ca* in January 2018 and she searched for products in the “Health & Personal Care” department by using the keyword “vital”. The search resulted in 2,468 hits, printouts of the first 21 pages of the result, representing the first 504 items, are attached as Exhibit A to her affidavit. I note that each page contains 24 listings of products, each consisting of an image of the product, following by a description of the product, the name of the entity, the price in Canadian dollars, and the vast majority includes an “Add to Cart” button.

[80] Ms. Roberts states that she reviewed the first 21 pages of the results and clicked on various herbal and nutritional supplements and skin creams, which led her to a new webpage featuring the product each time. Printouts of the selected product information pages are attached as Exhibits B to P.

[81] Ms. Roberts was then instructed to conduct other searches on Amazon’s website with keywords that included the word “vital” and attached the printouts of the results of her searches as Exhibits R to Z.

[82] I note the following information pertaining to products located by Ms. Roberts following her searches on Amazon’s website. In doing so, I have disregarded items that appeared more than once in the printouts (see items that are found in more than one exhibit in the table below), even if they are of different sizes for I consider those to be representative of one third party product in the marketplace. I have also disregarded a product identified as “express proteins+ bar - Vital Vanilla” at Exhibit H, a product identified as “Focus Factor” at Exhibit L, and a product identified as “Vital Brain Energy” also at Exhibit L, for the word “vital” cannot be seen in the images of the products. Finally, with respect to the item bearing the trademark AMINO VITAL also attached as Exhibit H, I note that with the exception of the trademark, the packaging does not contain any other information in English or French, nor does the product information page. As such, I am unable to determine the relevance of the product in relation to the goods and services in question. However, I note that there is another AMINO VITAL product attached as Exhibit M.

	<b>Exhibit</b>	<b>3<sup>rd</sup> Party “VITAL” Trademark(s)</b>	<b>Entity</b>	<b>Information</b>
1.	B	VITAL PROTEINS	Vital Proteins	Pasture-raised collagen peptides * Order placed and product received *
2.	B, E	VITAL GREENS	Naka	Nutrient and enzyme-rich superfood
3.	B	IRON VITAL F		Multiminerals * Order placed and product received *
4.	B	COR-VITAL	Cor-Vital	Enema coffee organic green beans finely ground with detox recipe
5.	B	VITAL NUTRIENTS ALLER-C	Vital Nutrients	Quercetin, C & bioflavonoids
6.	D	VITAL NUTRIENTS		Betaine HCl pepsin gentian root extract

7.	F	VITAL NUTRIENTS		Garlic 6000 * Order placed and product received *
8.	C	VITAL-ZYMES	Klaire Labs	Enzyme supplement * Order placed and product received *
9.	C	VITAL WHEY	Well Wisdom	Whey protein
10.	C, G	VITAL & Design	Vital Greens	Greens in powder
11.	E	VITAL GREENS & Design		Phyto-nutrient superfood
12.	F	VITAL PROTEIN & Design		Protein powder
13.	D	VITAL WEIGHT LOSS XL	Liddell	Homeopathic product for weight loss
14.	D	VITAL EARTH MINERALS	Vital Earth Minerals	Ionic mineral dietary supplement * Order placed and product received *
15.	F	VITAL EARTH MINERALS		Humic minerals - Not part of shopping cart
16.	L	VITAL EARTH MINERALS		Multivitamin * Order placed and product received *
17.	E	VITAL ENERGY	Yogi Tea	Tea bags - Not part of shopping cart
18.	F	VITAL 4U & Design	VITAL 4U	Screaming energy max hit with panax ginseng
19.	J	VITAL 4U		Multivitamin - Not part of shopping cart
20.	G	GINKO VITAL	HealthAid	Ginkgo biloba capsules
21.	P	B-VITAL		Rapid energy boost
22.	G	VITAL ADAPT	Natura Health	Adaptogenic tonic capsules

23.	H	VITAL ADAPT	Products	Adaptogenic tonic liquid
24.	G	VITAL 50+	Sanatogen	Ginkgo biloba and ginseng
25.	H	VITAL 5 Design	Forever Living Canada	Aloe vera gel
26.	H	VITAL BRILLIANCE	Purity Products	Rhodiola rosea
27.	O	VITAL MACA		Maca tonic with suma extract - Not part of shopping cart
28.	H	VITAL MEND	Vital Mend	Yacon root * Order placed and product received *
29.	H, L	VITAL K	Futurebiotics	Supplements with magnesium * Order placed and product received *
30.	M	AMINO VITAL	amino VITAL	Citric acid charge water [Japanese packaging]
31.	I, V	VITAL FORCE	Eclectic Institute	Multivitamin
32.	I	VITAL TREASURES	Paradise Herbs	Healthy hair and skin
33.	J	VITAL THERAPY	Vital Therapy	Vitamin C serum * Order placed and product received *
34.	L	VITALDHA	Zita West	DHA
35.	P	VITAL ESSENCE 1		Nutrition for weeks 0 - 12 of pregnancy
36.	M	VITA VITS	Higher Nature	Multivitamin
37.	O	VITAL DRINK	Best Body	Essential vital drink Elder
38.	R	SEROVITAL	SanMedica International	Human growth hormone * Order placed and product received *

39.	S	FLORAVITAL	Floradix	Iron and herbs supplement * Order placed *
40.	T	KINDERVITAL		Liquid calcium and vitamin formula
41.	U	VITAL PET LIPIDS	Vitality Science	Pet lipids for cats and dogs
42.	W	VITAL-OTIC	Vet Essentials	Ear cleanser for pets - Not part of shopping cart
43.	X	VITALUX	Vitalux	Eyecare vitamin capsules
44.	Y	CEREBROVITAL PQQ-10	Biolcinic Naturals	Dietary supplement
45.	Z	SYNO-VITAL	Syno-vital	Active balm

[83] Attached as Exhibit Q is a printout of the items placed in the shopping cart. Five of the products listed in the table above did not appear in the shopping cart. I note that the remaining 40 items bearing trademarks incorporating the word “vital” were made available to consumers in Canada for purchase by 31 various third parties. The shopping cart totaled \$2,107.06.

Ms. Roberts states that in view of the expense of all the selected items, an order was placed for 11 of the items selected, as shown in the order confirmation attached as Exhibit Q. Ten of the items purchased were delivered by the time that the Applicant filed all of its evidence. Attached as Exhibits Q and R to Ms. Robert’s Affidavit and as Exhibit GG of the Supplementary Roberts Affidavit are photos of sample products purchased and received. I have identified the items received in question in the table above.

[84] Attached as Exhibit DD to Ms. Roberts’ Affidavit is the result from her search of the Trademarks Database maintained by the Canadian Intellectual Property Office for registered and applied for trademarks that incorporated the word “vital” in connection with vitamins, supplements and pharmaceuticals as of February 1, 2018, along with certified copies attached as Exhibit EE. I note the following registrations for trademarks incorporating the word “vital” in association with herbal and dietary supplements, including vitamins:

	<b>3<sup>rd</sup> Party “VITAL” Trademark(s)</b>	<b>Registration or Application No.</b>	<b>Current Owner</b>
1.	VITALEXX	TMA799,783	Siebte PMI Verwaltungs GMBH
2.	FLORADIX-KINDERVITAL	TMA877,658	SALUS Haus Dr. med. Otto Greither
3.	KINDERVITAL	TMA877,655	
4.	FLORAVITAL	TMA408,835	
5.	VITAL FUERTE H3	TMA915,318	Farmamedica, S.A.
6.	VITAL FUERTE	TMA915,319	
7.	LONGO-VITAL	TMA328,558	Paramedical A/S
8.	SPORTVITAL & Design	TMA641,611	ENERVIT S.p.A.
9.	AROMAVITAL	TMA579,948	LABORATOIRES SAINT BENOIT- HEUPROPHAX
10.	VITALP Design	TMA504,989	Dr. med. Aufdermaur AG
11.	INTELLIBOND VITAL 4	TMA916,771	Micronutrients USA LLC
12.	IRON VITAL F	TMA746,273	Naka Sales Ltd.
13.	AMINO VITAL	TMA643,504	AJINOMOTO CO., INC.
14.	INUVITAL	TMA569,661	SymbioGrupe GmbH & Co KG
15.	SYMBIO VITAL Design	TMA616,481	
16.	VITALMAX	TMA791,368	Natureland Products Ltd.
17.	HYBEN VITAL	TMA512,009	ERIK FARMERS HYBEN VITAL APS
18.	VITAL COPPER	TMA653,277	ProCyte Corporation
19.	PLUSVITAL	TMA350,906	PLUSVITAL LIMITED
20.	VITAL LIFESTYLE WATER	TMA720,706	Big Earth Brands Ltd.
21.	VITAL5	TMA989,443	Aloe Vera of America, Inc.

22.	SEROVITAL	TMA966,408	Quality IP Holdings, LLC
23.	VITAL-AI	TMA638,391	BIOHERBALAI INC.
24.	VITALMAG	TMA854,281	Shaklee Corporation
25.	VITAL VANILLA	TMA563,691	Genuine Health Inc.
26.	VITAL CHOICE	TMA732,511	Vital Choice Seafood, Inc.
27.	VITAL VIGOR	TMA873,776	Grand Health Inc.
28.	CEREBROVITAL PQQ-10	TMA907,518	Bioclinic Naturals Inc.

[85] I note that the list includes trademarks that appear on products that Ms. Roberts purchased on Amazon: FLORAVITAL, IRON VITAL F and SEROVITAL, and ones where she added to her shopping cart but did not order: FLORADIX-KINDERVITAL, KINDERVITAL, VITAL 5 and CEREBROVITAL PQQ-10.

[86] Finally, Ms. Roberts conducted internet searches for vitamins and supplements bearing “VITAL” trademarks and then contacted retailers and distributors in Canada to obtain information regarding certain products’ availabilities [paragraphs 23 to 27 and Exhibits AA to CC of the Roberts Affidavit]. The probative value of these searches is very limited on their own. Setting aside the fact that no photo of the products sold under the mark VITAL PROTEINS is attached in Exhibit CC, I do not consider printouts with photos of supplements from *nehealth.ca* set out in Exhibit AA, nor the confirmation that a supplement set out in Exhibit B is not available through a distributor in Ontario, to be strong evidence of the use of third party VITAL trademarks in the Canadian marketplace. There is no evidence that Ms. Roberts purchased the products online, or that any of these goods have been sold in Canada, purchased by Canadians or are otherwise known to Canadians.

[87] When the evidence presented by Ms. Roberts is viewed in its entirety, I am mindful of the fact that this is merely a snapshot of a portion of the state of the marketplace regarding the use of the word “vital” in connection with the herbal and dietary supplements trade at one particular moment in time, combined with a list of trademarks that are registered in Canada without information on their use for the most part. There are undoubtedly more comprehensive, and presumably more onerous, ways to establish the state of the marketplace with respect to the



common adoption or use of a term in the trade. To name a few, Ms. Roberts did not obtain Canadian annual sales information for the 40 products she was able to put in her Amazon shopping cart; Ms. Roberts did not visit physical stores in different parts of Canada to canvass the extent to which herbal or dietary supplements bearing “VITAL” trademarks are sold to consumers across Canada; Ms. Roberts did not attach sample flyers with circulation numbers for any of the third party products bearing “VITAL” trademarks; and there is no indication that Ms. Roberts attempted to confirm the actual use of all 28 “VITAL” trademarks listed on the register. Even so, there is no single type of evidence, or a specific combination of the types of evidence, that is required for a party to establish common adoption of a term in a particular trade at a given time.

[88] Given the facts of this case, I am of the view that the state of the marketplace evidence set out in Ms. Roberts’ affidavits shows fairly extensive use of the term “vital” by different third party entities in the herbal and dietary supplements trade, which is consistent with the state of the register evidence that shows the existence of a number of “VITAL” trademarks belonging to third party owners on the register, such that I am able to infer that the word “vital” was a common element in the herbal and dietary supplements trade in early 2018.

[89] In doing so, I have taken into account the relevant material date for this ground of opposition, which is the date of my decision. The Applicant has submitted a list of no less than 28 registered “VITAL” trademarks in connection with vitamins and supplements, belonging to 24 third party entities. This state of the register evidence is combined with evidence of actual use in the marketplace, in the form of no less than 40 “VITAL” brand herbal and dietary supplements by 31 third party entities made available for purchase by consumers in Canada via the Amazon website, with the purchase of a subset of those products and the delivery of 10 of them at the time that the evidence was filed. I have also taken into consideration evidence of a number of registered “VITAL” trademarks shown on herbal and dietary supplements made available for purchase or purchased on Amazon. I further note that the Opponent has offered no evidence to the contrary and has not challenged any of the evidence put forth by the Applicant.

[90] In view of the foregoing, I am satisfied that there is common adoption or use of the term “vital” in connection with the herbal and dietary supplements trade. This additional surrounding circumstance favours the Applicant.

*Conclusion regarding the likelihood of confusion*

[91] In *Masterpiece*, the Supreme Court of Canada indicated that the most important factor amongst those listed under section 6(5) of the Act is often the degree of resemblance between the parties’ trademarks [see also *Beverley Bedding & Upholstery Co v Regal Bedding & Upholstering Ltd* (1980), 47 CPR (2d) 145 (FC), at 149, affirmed (1982), 60 CPR (2d) 70 (FCA)]. Specifically, the Court noted that the degree of resemblance is the statutory factor that is often likely to have the greatest effect on the confusion analysis; the other factors become significant only once the trademarks are found to be identical or very similar. Moreover, while the first component of a mark will often be considered to be the most important, where that portion is common to the trade, or is descriptive or suggestive, the significance of the first component decreases [see *Conde Nast Publications*].

[92] If the part of the opponent’s mark that was “taken” is common to trade, little weight is to be given to this factor as it does not materially contribute to the distinctiveness of the mark. In this case, the only element of resemblance is the term “vital”. While “vital” is the first written portion of the parties’ marks, the Applicant has provided a combination of the state of the register and the state of the marketplace evidence providing proof of commercial use that is sufficient to support a finding that the word “vital” is in fairly extensive use in the herbal and dietary supplement trade and an inference that “VITAL” trademarks are commonly used in the trade such that consumers of these goods and services are accustomed to making fine distinctions between the various “VITAL” trademarks in the marketplace, by paying more attention to differences between them.

[93] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection. Having considered all of the surrounding circumstances, while there is clear overlap between the parties’ goods and services and potential overlap in their channels of trade, in view of the extent to which the Mark has become known, the length of time the Mark has been in use, and the differences in the parties’ marks when viewed in their entirety bearing in

mind the common adoption of the term “vital” in connection with the herbal and dietary supplements trade, I am satisfied that the Applicant has discharged its burden to prove that, on a balance of probabilities, there is no likelihood of confusion between the Mark and the Opponent’s trademarks VITAL SOURCE or VITAL SOURCE & Design as of the date of my decision.

DISPOSITION

[94] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

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Pik-Ki Fung  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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No hearing was held.

**AGENTS OF RECORD**

CAMERON IP

FOR THE OPPONENT

PAULINE BOSMAN (On Brand IP)

FOR THE APPLICANT

## Schedule “A”

### Trademark



Registration No. TMA922,189

### Statement of Goods

- (1) Vitamins.
- (2) Mineral supplements.
- (3) Herbal supplements for general health and well-being.
- (4) Food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (5) Food supplements, namely, dietary supplements for general health and well-being and dietary supplements for promoting weight loss.
- (6) Protein supplements in tablet, capsule, powder or liquid form.

### Statement of Services

- (1) Custom manufacture of vitamins.
- (2) Custom manufacture of mineral supplements.
- (3) Custom manufacture of herbal supplements for general health and well-being.
- (4) Custom manufacture of food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (5) Custom manufacture of food supplements, namely, dietary supplements for general health and well-being, and dietary supplements for promoting weight loss.
- (6) Custom manufacture of protein supplements in tablet, capsule, powder or liquid form.
- (7) Custom packaging of vitamins.
- (8) Custom packaging of mineral supplements.
- (9) Custom packaging of herbal supplements for general health and well-being.
- (10) Custom packaging of food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (11) Custom packaging of food supplements, namely, dietary supplements for general health and well-being, and dietary supplements for promoting weight loss.
- (12) Custom packaging of protein supplements in tablet, capsule, powder or liquid form.

Trademark VITAL SOURCE

Registration No. TMA922,191

Statement of Goods

- (1) Vitamins.
- (2) Mineral supplements.
- (3) Herbal supplements for general health and well-being.
- (4) Food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (5) Food supplements, namely, dietary supplements for general health and well-being and dietary supplements for promoting weight loss.
- (6) Protein supplements in tablet, capsule, powder or liquid form.

Statement of Services

- (1) Custom manufacture of vitamins.
- (2) Custom manufacture of mineral supplements.
- (3) Custom manufacture of herbal supplements for general health and well-being.
- (4) Custom manufacture of food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (5) Custom manufacture of food supplements, namely, dietary supplements for general health and well-being, and dietary supplements for promoting weight loss.
- (6) Protein supplements in tablet, capsule, powder or liquid form.
- (7) Custom packaging of vitamins.
- (8) Custom packaging of mineral supplements.
- (9) Custom packaging of herbal supplements for general health and well-being.
- (10) Custom packaging of food supplements, namely, meal replacement bars, meal replacement drinks and meal replacement powders.
- (11) Custom packaging of food supplements, namely, dietary supplements for general health and well-being, and dietary supplements for promoting weight loss.
- (12) Custom packaging of protein supplements in tablet, capsule, powder or liquid form.