

ESTTA Tracking number: **ESTTA1226979**

Filing date: **08/05/2022**

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

Ex Parte Appeal - Serial No.	90389844
Appellant	Better Life Nutritional Supplements, LLC
Applied for mark	WAKE-UP CALL
Correspondence address	DAVID L. OPPENHUIZEN OPPENHUIZEN LAW PLC 5960 TAHOE DR SE STE 105 GRAND RAPIDS, MI 49546 UNITED STATES Primary email: docket@oppenhuizen.com 616-242-9550
Submission	Appeal brief
Attachments	Appeal Brief.pdf(215375 bytes)
Appealed class	Class 005. All goods and services in the class are appealed, namely: Dietary supplements; Nutritional supplements
Filer's name	David L. Oppenhuizen
Filer's email	david@oppenhuizen.com
Signature	/David L. Oppenhuizen/
Date	08/05/2022

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

Ex Parte Appeal of:

App. Ser. No.: 90389844

Mark: WAKE-UP CALL

Applicant: Better Life Nutritional Supplements, LLC

Examining Atty: Troy Knight

File Reg.: BRO-101-T

BRIEF ON APPEAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
INTRODUCTION	4
ARGUMENT	4
1. Third Party Trademark Registrations.....	9
2. Third Party Trademark Usage.....	11
CONCLUSION.....	15

TABLE OF AUTHORITIES

CASES

<i>Alliance Mfg. Co. v. Allied Tel. Co.</i> , 182 U.S.P.Q. 237 (T.T.A.B. 1974).....	7
<i>Allstate Ins. Co. v. Allstate Inv. Corp.</i> , 328 F.2d 608, 141 U.S.P.Q. 280 (5 th Cir. 1964)	5
<i>Am. Optical Corp. v. Am. Olean Tile Co.</i> , 185 U.S.P.Q. 405 (S.D.N.Y. 1974)	5
<i>Beneficial Corp. v. Beneficial Capital Corp.</i> , 529 F. Supp. 445, 213 U.S.P.Q. 1091 (S.D.N.Y. 1982).....	5
<i>Bose Corp. v. QSC Audio Prods.</i> , 293 F.3d 1367, 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002).....	8
<i>Cal. Fruit Growers Exch. v. Sunkist Baking Co.</i> , 166 F.2d 971, 76 U.S.P.Q. 85 (7 th Cir. 1947)..	7
<i>Consumers Petroleum Co. v. Consumers Co. of Ill.</i> , 169 F.2d 153, 78 U.S.P.Q. 227 (7 th Cir. 1948).....	6
<i>Cooper Indus., Inc. v. Repcoparts USA, Inc.</i> , 218 U.S.P.Q. 81, 84 (T.T.A.B. 1983).....	8
<i>Exquisite Form Indus., Inc. v. Exquisite Fabrics of London</i> , 378 F. Supp. 403, 183 U.S.P.Q. 666 (S.D.N.Y. 1974).....	6
<i>Fed. Tel. & Radio Corp. v. Fed. Television Corp.</i> , 180 F.2d 250, 84 U.S.P.Q. 394 (2d Cir. 1950)	6
<i>H. Lubovsky, Inc. v. Esprit de Corp.</i> , 627 F. Supp. 483, 228 U.S.P.Q. 814 (S.D.N.Y. 1986).....	6
<i>In re British Bulldog, Ltd.</i> , 224 U.S.P.Q. 854 (T.T.A.B. 1984).....	7
<i>In re E. I. du Pont de Nemours & Co.</i> , 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973)	4
<i>In re St. Helena Hosp.</i> , 113 U.S.P.Q.2d 1082 (Fed. Cir. 2014).....	9
<i>In re Thor Tech, Inc.</i> , 113 U.S.P.Q.2d 1546, 1549 (T.T.A.B. 2015).....	10
<i>In re White Rock Distilleries Inc.</i> , 92 USPQ2d 1282, 1285 (TTAB 2009)	9
<i>Kiekhaefer Corp. v. Willys-Overland Motors, Inc.</i> , 236 F.2d 423, 111 U.S.P.Q. 105 (C.C.P.A. 1956).....	6
<i>Kingsford Prods. Co. v. Kingsfords, Inc.</i> , 715 F. Supp. 1013, 11 U.S.P.Q.2d 1350 (D. Kan. 1989)	6
<i>Lever Bros. Co. v. Am. Bakeries Co.</i> , 693 F.2d 251, 216 U.S.P.Q. 177 (2d Cir. 1982)	5
<i>McGregor-Doniger, Inc. v. Drizzle, Inc.</i> , 599 F.2d 1126, 202 U.S.P.Q. 81 (2d Cir. 1979)	6
<i>Modular Cinemas of Am., Inc. v. Mini Cinemas Corp.</i> , 348 F. Supp. 578, 175 U.S.P.Q. 355 (S.D.N.Y. 1972).....	7
<i>Pabst Brewing Co. v. Decatur Brewing Co.</i> , 284 F. 110 (7 th Cir. 1922)	5
<i>Pep Boys-Manny, Moe & Jack v. Edwin F. Guth Co.</i> , 197 F.2d 527, 94 U.S.P.Q. 158 (C.C.P.A. 1952).....	5

<i>Riva Boats Int’l Spa v. Yamaha Motor Corp.</i> , 223 U.S.P.Q. 183 (C.D. Cal. 1983)	7
<i>Schenley Distillers, Inc. v. General Cigar Co.</i> , 427 F.2d 783, 166 U.S.P.Q. 142 (C.C.P.A. 1970)7	
<i>Scott v. Mego Int’l, Inc.</i> , 519 F. Supp. 1118, 213 U.S.P.Q. 824 (D. Minn. 1981).....	7
<i>Sunbeam Lighting Co. v. Sunbeam Corp.</i> , 183 F.2d 969, 86 U.S.P.Q. 240 (9th Cir. 1950).....	7
<i>Trustees of Columbia Univ. v. Columbia/HCA Healthcare Corp.</i> , 964 F. Supp. 733, 43 U.S.P.Q.2d 2 1083 (S.D.N.Y. 1997)	5
<i>Vital Pharmaceuticals, Inc. v. Conrad J. Kronholm, Jr.</i> , 99 U.S.P.Q.2d 1708, (T.T.A.B. 2011) 13	
<i>Vitarroz Corp. v. Borden, Inc.</i> , 644 F.2d 960, 209 U.S.P.Q. 969 (2d Cir. 1981)	5

TREATISES

J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 24:62 at 24-177 (4th ed. 2017)	4
--	---



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.