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

Proceeding	77486429
Applicant	Omega Alpha Pharmaceuticals Inc.
Applied for Mark	OMEGA ALPHA
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Date	03/29/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant:** Omega Alpha Pharmaceuticals Inc. )  
**Trademark:** OMEGA ALPHA (and Design) ) BEFORE THE  
**Serial No.:** 77486429 ) TRADEMARK TRIAL  
**Filing Date:** May 29, 2008 ) AND  
**Examining Attorney:** Darryl M. Spruill ) APPEAL BOARD  
**Address:** Law Office 112 ) ON APPEAL

**REPLY BRIEF OF APPELLANT OMEGA ALPHA PHARMACEUTICALS, INC.**

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## INTRODUCTION

Appellant has appealed the trademark Examining Attorney's final refusal dated March 9, 2012. The final refusal of Appellant's application to register the trademark OMEGA ALPHA (and Design) in connection with dietary, nutritional, and herbal supplements, was made by the Examining Attorney on the grounds that the applied-for mark consists of or includes deceptive matter in relation to the identified goods under Trademark Act §2(a), 15 U.S.C. §1052(a). Appellant filed a Notice of Appeal on November 18, 2011 and duly filed its opening brief on January 17, 2012. The Examining Attorney mailed his opening brief to Appellant on March 9, 2012. This Reply Brief responds to the Examining Attorney's March 9, 2012 opening brief.

## REPLY TO EXAMINING ATTORNEY'S STATEMENT OF FACTS

The Examining Attorney's statement of facts concerning the period from May 29, 2008 to January 6, 2011 omits, or incorrectly characterizes, a few facts which Appellant believes are important. After the application was filed on May 29, 2008, there was active prosecution in the case and written and oral communications with the initial Examining Attorney. The Office mailed two office actions and the applicant (now Appellant) successfully responded to all the issues raised therein.<sup>1</sup> The first time a rejection of Appellant's mark on the grounds of deceptive misdescription was made was

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<sup>1</sup> Appellant takes issue with the Examining Attorney's characterization of Appellant's goods as a "laundry list of goods." The list of Appellant's goods is not at issue in this appeal. As stated in the Examining Attorney's own fact section, "Next on May 5, 2010, examining attorney accepted applicant's amended identification of goods."

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