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

Proceeding	91188664
Party	Defendant NutraMarks, Inc.
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Submission	Answer
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Date	03/16/2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bayer HealthCare LLC,)
)
Opposer,) Opposition No.: 91188664
)
v.)
)
NutraMarks, Inc.,)
)
Applicant.)

ANSWER TO NOTICE OF OPPOSITION

Applicant, NutraMarks, Inc., by and through its attorneys, answers Opposer Bayer HealthCare LLC's Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of Opposer's Notice of Opposition and therefore, denies those allegations.
2. Applicant admits the allegations of Paragraph 2 of Opposer's Notice of Opposition.
3. Applicant admits the allegations of Paragraph 3 of Opposer's Notice of Opposition.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of Opposer's Notice of Opposition and therefore, denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of Opposer's Notice of Opposition and therefore, denies those allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of Opposer's Notice of Opposition and therefore, denies those allegations.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of Opposer's Notice of Opposition and therefore, denies those allegations.

8. Applicant denies the allegations of Paragraph 8 of Opposer's Notice of Opposition.

9. Applicant denies the allegations of Paragraph 9 of Opposer's Notice of Opposition.

10. Applicant denies the allegations of Paragraph 10 of Opposer's Notice of Opposition.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of Opposer's Notice of Opposition and therefore, denies those allegations.

12. Applicant denies the allegations of Paragraph 12 of Opposer's Notice of Opposition.

13. Applicant denies the allegations of Paragraph 13 of Opposer's Notice of Opposition.

All allegations in Opposer's Opposition that are not explicitly admitted herein are denied.

FIRST DEFENSE

Opposer's stated ground for opposition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Opposer is barred from challenging Applicant's mark by the doctrines of acquiescence, waiver, laches and/or estoppel.

THIRD DEFENSE

Opposer's asserted mark has been rendered weak and/or is not likely to be confused with Applicant's mark due to the presence of numerous third-party marks used in commerce, all of which are in International Class 003 and/or 005, including:

MARK	GOODS/SERVICES DESCRIPTION	DATE OF FIRST USE
RELEEV Reg. No. 3,350,105	Class 5 - Medicinal herbal extracts and medicinal herbal infusions	11/1/2002
ALUWE Reg. No. 2,694,132	Class 5 – Nutritional supplements	5/1/2001
ATREV Reg. No. 2,901,099	Class 3 - Cosmetics, namely, deep cleansing creams, exfoliation creams, body firming creams, toning and moisturizing lotions, moisturizing day cream, protector moisturizing cream, nourishing night creams with Collagen, night moisturizing creams, exfoliation creams, stretch mark softening cream, muscle relaxant creams, facial gel, body firming lotions, oil control gelly lotions, astringent and refreshing lotions, flash cleansing gels, night repairing gel, lip and eye contour gels, body contour gels, eye makeup remover gels, lip moisturizing	1993

MARK	GOODS/SERVICES DESCRIPTION	DATE OF FIRST USE
	gels, oil-control gelly lotion, mascara, rouge, eye shadow, compact powder	
ALEZE Reg. No. 2,841,450	Class 5 - Allergen neutralizing sprays for neutralizing irritants created by dust mites, cats and dogs	7/27/2001
BALEV & Design Reg. No. 3,158,864 (Madrid)	Class 3 - Hair lotions; dentifrices, aromatics, essential oils for personal use; sachets for perfuming linen; scented water, scented wood; flavourings for beverages, namely, essential oils; cake flavourings, namely, essential oils; breath-freshening sprays; air freshening aromatics; soaps, perfumery, cosmetics; eaux de toilette; eau-de-Cologne; plant extracts for use as aromatics in cosmetics, fragrant potpourris, disposable tissues impregnated with cosmetic lotions, oils for perfumes and scents, fabric conditioners Class 5 - Disinfectants, oxygen baths, salts for mineral water baths, therapeutic preparations for the bath, smelling salts, smelling salts, disinfectants for hygiene purposes, disinfectants for chemical toilets, fumigating pastilles, deodorants, other than for personal use, air freshening preparations, air purifying preparations, antiseptics, antiparasitic products and preparations for animal hygiene, air-freshening and deodorizing products for medical or sanitary use	
ALLER 24 Reg. No. 3,398,362	Class 5 - Herbal and vitamin supplements	5/1/2002
ALLITRU Reg. No. 2,981,005	Class 5 – dietary supplement	3/19/2004
ALOEVIDA Reg. No. 3,042,866	Class 5 - nutritional supplements	12/2/2004
ALVITUM Reg. No. 3,308,771	Class 5 - Nutritional supplements; dietary supplements	8/25/2005
ALINIA	Class 5 - Pharmaceuticals, namely, anti	11/22/2002

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