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

Proceeding no.	91276856
Party	Defendant Burroughs Diane C.
Correspondence address	BURROUGHS DIANE C. 5025 N SUNGOLD LN CASTLE ROCK, CO 80109 UNITED STATES Primary email: dianecburroughs@gmail.com Secondary email(s): birdsupplies@gmail.com 719-650-0812
Submission	Answer
Filer's name	Rexford Brabson
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Signature	/Rexford Brabson/
Date	07/16/2022
Attachments	2022.07.16-Answer.pdf(250838 bytes )

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

In the matter of Trademark Application Ser. No. 90858339

Applicant: Diane C. Burroughs

Mark: UNRUFFLEDRX-SCIENCE-BACKED PARROT WELLNESS

Wellness Pet, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91276856
	)	
Diane C. Burroughs	)	
	)	
Applicant.	)	
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER**

In response to Wellness Pet, LLC’s (“Opposer”) Notice of Opposition, Applicant Diane C. Burroughs (“Applicant”) responds as follows:

Applicant denies each and every allegation of the Notice of Opposition unless it is expressly admitted herein:

- 1) Paragraph 1 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 2) Admitted to the extent that the information listed appears to be the same information listed in Applicant’s Application.

- 3) Admitted to the extent that the information listed appears to be the same information listed in Applicant's Application.
- 4) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 4, and therefore, denies the same.
- 5) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 5, and therefore, denies the same.
- 6) Paragraph 6 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 7) Paragraph 7 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 8) Paragraph 8 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 9) Paragraph 9 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 10) Applicant is without sufficient knowledge or information to form a belief as to the allegations of paragraph 10, and therefore, denies the same.
- 11) Paragraph 11 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 12) Paragraph 12 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 13) Paragraph 13 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

- 14) Paragraph 14 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 15) Paragraph 15 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 16) Paragraph 16 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 17) Paragraph 17 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 18) Paragraph 18 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 19) Paragraph 19 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 20) Paragraph 20 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.
- 21) Paragraph 21 calls for a legal conclusion to which no response is necessary. To the extent a response is necessary, Applicant denies the allegations.

#### **AFFIRMATIVE DEFENSES**

- 1) First Affirmative Defense: There is no likelihood of confusion, mistake, or deception between Opposer's Marks and Applicants' Mark.
  - a. First, Applicant's Mark and Opposer's WELLNESS trademarks differ in sight, sound, meaning, and commercial impression.
    - i. Applicant's Mark is a distinctive five-word phrase, while Opposer's Marks consist of other phrases including the word "wellness" and design

marks including the word “wellness”, consisting of the word “wellness” with an illustrated smiling sun. Opposer has not obtained a U.S. trademark registration for the term “wellness” as a singular word mark. The UNRUFFLEDRX-SCIENCE-BACKED PARROT element is wholly unique and entirely missing from Opposer’s Marks. Indeed, Applicant’s Mark and Opposer’s Marks only overlap with one word, “wellness”. The similarity is diminished by the narrowing of the meaning of the word “wellness” to “parrot wellness” in Applicant’s Mark, serving as a descriptor for products that will facilitate the good health of parrots. The similarity is further diminished by the distinctiveness and fancifulness of Applicant’s UNRUFFLEDRX, which takes the forefront of the mark.

- ii. UNRUFFLEDRX-SCIENCE-BACKED PARROT WELLNESS has a commercial impression unlike Opposer’s Marks, in that it evokes a more specific connotation. Applicant’s Mark evokes a specific message and narrows the meaning. Applicant’s Mark contains the fanciful word UNRUFFLEDRX, which derives from an association with birds (ruffled feathers) and prescription medicine (Rx is commonly known to most as the symbol for a medical prescription). This commercial impression is



demonstrated by Applicant’s design - . This word UNRUFFLEDRX clearly distinguishes itself from Opposer’s Marks and precludes any likelihood of confusion.

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