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

Proceeding	92067273
Party	Defendant Boston BioPharm, Inc.
Correspondence Address	ANDREW D PRICE VENABLE PO BOX 34385 WASHINGTON, DC 20043-4385 UNITED STATES Email: csmitros@venable.com, adprice@venable.com, trademarkdocket@venable.com
Submission	Answer and Counterclaim
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Signature	/Catherine Mitros/
Date	01/17/2018
Attachments	Cancellation No. 92067273 Answer and Counterclaim.pdf(3803194 bytes)

Registration Subject to the filing

Registration No.	3221204	Registration date	03/27/2007
Registrant	DOLCAS BIOTECH, LLC 9 Lenel Road Landing, NJ 07850 UNITED STATES		

Goods/Services Subject to the filing

Class 005. First Use: 2006/06/06 First Use In Commerce: 2006/06/06
All goods and services in the class are requested, namely: NUTRITIONAL SUPPLEMENTS IN TABLETS, CAPSULES, POWDER, SOFT GEL AND GRANULE FORM

Grounds for Cancellation

The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DOLCAS BIOTECH, LLC)
)
Petitioner,)
)
v.)
)
BOSTON BIOPHARM, INC.)
)
)
Registrant.)

Cancellation No. 92067273
Registration No. 5209646
BIOCURC

Attorney's Reference: 128390-423921

REGISTRANT'S ANSWER

Registrant, Boston BioPharm, Inc., through its counsel, hereby Answers the Petition for Cancellation as follows:

Registrant denies each and every allegation of the Petition for Cancellation unless otherwise admitted or responded to as follows:

1. Answering paragraph 1 of the Petition, Registrant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 1 of the Petition, and therefore denies the same.
2. Admitted.
3. Answering paragraph 3 of the Petition, Registrant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 3 of the Petition, and therefore denies the same.

4. Answering paragraph 4 of the Petition, Registrant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 4 of the Petition, and therefore denies the same.
5. Denied.
6. Answering paragraph 6 of the Petition, Registrant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 6 of the Petition, and therefore denies the same.
7. Answering paragraph 7 of the Petition, Registrant lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 7 of the Petition, and therefore denies the same.
8. Denied.
9. Denied.

COUNTERCLAIM TO CANCEL PETITIONER’S REGISTRATION NO. 3,221,204

10. Registrant is the owner of U.S. Trademark Registration No. 5,209,646 issued May 23, 2017 from an application filed November 21, 2013 for the mark BIOCURC for “Dietary and nutritional supplements; Dietetic foods, namely, dietary supplements adapted for medical use” (“Registrant’s Registration”).
11. Petitioner filed a petition to cancel Registrant’s Registration on the basis of priority and likelihood of confusion pertaining to its U.S. Registrations for the word marks BIO-CURCUMIN (U.S. Reg. No. 3,221,204), BIO-CURCUMAX (U.S. Reg. No. 3,278,319), BIO CURCUMA (U.S. Reg. No. 3,478,585) and BCM-95 (BIO CURCUMIN) (U.S. Reg. No. 3,968,182).

12. Petitioner registered in the U.S. Patent and Trademark Office (“USPTO”) on the Principle Register Registration No. 3,221,204 for BIO-CURCUMIN, filed October 15, 2007, for “Nutritional supplements in powder, tablet and capsule form” in Class 5 (“Petitioner’s Registration”).
13. The registered mark BIO-CURCUMIN is now a generic term.
14. Exhibit A comprises Petitioner’s Registration No. 3,697,233 for ENHANCED BIO AVAILABLE CURCUMIN, which was filed on May 14, 2009 for “Dietary supplements in tablet, capsule, powder and liquid form” and registered on the Supplemental Register on October 13, 2009.
15. As shown in Exhibit A, Registration No. 3,697,233 disclaims “CURCUMIN.”
16. A disclaimer in a Supplemental Register registration means that the disclaimed wording is considered generic.
17. Therefore, the disclaimer of “CURCUMIN” in Reg. No. 3,697,233 means that “CURCUMIN” is generic.
18. The term “curcumin” is a generic designation for turmeric extract.
19. The attached screenshot in Exhibit B shows the definition of “bioavailable.”
20. The term “bioavailable” at one time was associated in the minds of the purchasing public as a descriptive, nondistinctive designation for the quality of a substance to enter the body’s circulation and have an active effect.
21. The term “bioavailable” has now become associated in the minds of the purchasing public as a generic designation.

22. Exhibit C comprises third-party Registration No. 4,680,405 for



23. As shown in Exhibit C, Registration No. 4,680,405 disclaims “BIOAVAILABLE CURCUMIN.”

24. The attached screenshots in Exhibit D show the term “bioavailable curcumin” appearing on or in connection with various third-party nutritional supplements.

25. The term “bioavailable curcumin” has become a generic designation for curcumin that may enter the body’s circulation and have an active effect.

26. The attached screenshot in Exhibit E shows that the term “BIO” is an abbreviation for “bioavailable.”

27. The term “BIO” has become a generic designation of the term “bioavailable” in the context of nutritional supplements containing bioavailable ingredients.

28. The terms “BIO” and “CURCUMIN” retain their meanings when combined in the compound mark BIO-CURCUMIN in the context of nutritional supplements.

29. The term “BIO-CURCUMIN” has become associated in the minds of the purchasing public as a generic designation for nutritional supplements containing curcumin that is bioavailable.

30. The registered mark “BIO-CURCUMIN” identifies “nutritional supplements in tablets, capsules, powder, soft gel and granule form.”

31. Given the clear meaning of the term “BIO-CURCUMIN,” members of the relevant consuming public will perceive “BIO-CURCUMIN” as a generic term for nutritional supplements containing curcumin that is bioavailable.

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