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

In the Matter of Trademark Application

Applicant: Joel D. Wallach

Trademark: OSTEO-FX

Serial No. 76/274,080

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NUMICO FINANCIAL SERVICES, SA.,)
)
 Opposer)
)
 v.)
)
 DR. JOEL D. WALLACH)
)
 Applicant)
)
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)
)

Opposition No. 91150888

EXPRESS MAIL MAILING LABEL NUMBER: EV 120834580 US
DATE OF DEPOSIT: April 2, 2002
I hereby certify that this Answer to Opposition is being deposited with the
United States Postal Service "Express Mail Post Office To Addressee"
service under 37 C.F.R. 1.10 on the date indicated above and is addressed
to Commissioner Of Patents and Trademarks, 2900 Crystal Drive,
Arlington, VA 22202-3513
Vangie Samson *[Signature]* Date 4/2/02

APPLICANT'S ANSWER TO OPPOSITION

1. Dr. Joel D. Wallach, an individual (hereinafter "Respondent"), responds to NUMICO FINANCIAL SERVICES, SA. (hereinafter "Opposer") Notice of Opposition to registration of the mark OSTEO-FX as follows:

Response to Opposer's Allegation Number 1

2. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 1, specifically that the Opposer is the owner of OSTEO-BI-FLEX, U.S. Registration No. 2,205,607 in International Class No. 005.

S.A.

Response to Opposer's Allegation Number 2

3. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 2, specifically that the mark OSTEO-BI-FLEX was first used in commerce on April 24, 1997.

4. Respondent admits that an application for the mark OSTEO-BI-FLEX was filed on October 7, 1997.

Response to Opposer's Allegation Number 3

5. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 3, specifically that the mark OSTEO-BI-FLEX was published in the Official Gazette unopposed.

6. Respondent admits that the mark OSTEO-BI-FLEX received registration November 24, 1998.

Response to Opposer's Allegation Number 4

7. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 4, specifically that the mark OSTEO-BI-FLEX is used on dietary supplement used for the purpose of promoting cartilage regeneration and joint flexibility.

Response to Opposer's Allegation Number 5

8. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 5, specifically that goods associated with the mark OSTEO-BI-FLEX are widely recommended by medical professionals nor that the product associated with the mark is a leading doctor recommended glucosamine/chondroitin supplement.

Response to Opposer's Allegation Number 6

9. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 6, specifically that the mark OSTEO-BI-FLEX has been in continuous widespread use in interstate commerce.

Response to Opposer's Allegation Number 7

10. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 6, specifically that the mark OSTEO-BI-FLEX has annual sales of 100 million and is the number 1 selling dietary supplement in the bone and joint category at the U.S. food, drug, and mass merchandisers. Furthermore, the Respondent is without information and knowledge sufficient to form a belief as to what is meant by the statement the "U.S. food, drug and mass merchandisers."

Response to Opposer's Allegation Number 8

11. Respondent denies that the mark OSTEO-BI-FLEX has been widely and favorably known to the public.

Response to Opposer's Allegation Number 9

12. Respondent denies that the mark OSTEO-BI-FLEX has acquired considerable and valuable good will symbolized by such mark.

Response to Opposer's Allegation Number 10

13. Respondent admits the allegation of Opposer's paragraph 10.

Response to Opposer's Allegation Number 11

14. Respondent is without information and knowledge sufficient to form a belief as to the truth of the allegations of paragraph number 11, specifically that the mark OSTEO-BI-FLEX was in use in interstate commerce more than 4 years before the filing of Respondents application for registration of the mark OSTEO-FX. Respondent admits that the Opposer filed its

application for the mark OSTEO-BI-FLEX almost 4 years before the Respondent filed its application for the mark OSTEO-FX.

Response to Opposer's Allegation Number 12

15. Respondent denies that Respondent's mark OSTEO-FX closely resembles the Opposer's mark OSTEO-BI-FLEX in any manner including sound or appearance. The marks are both composite marks using as one of the elements the word "Osteo." Although, a similar meaning is created by the use of Osteo in the marks, there exists no other similarity between the actual marks, making the marks readily distinguishable.

Response to Opposer's Allegation Number 13

16. Respondent admits that the mark OSTEO-FX is intended for nutritional supplements containing glucosamine and chondroitin, which have been shown to be beneficial to joints.

Response to Opposer's Allegation Number 14

17. Respondent denies that Respondent's mark OSTEO-FX closely resembles the Opposer's mark OSTEO-BI-FLEX in any manner including sound or appearance. Respondent further denies that any likelihood of confusion exists, whatsoever.

Response to Opposer's Allegation Number 15

18. Respondent denies that Registration to the mark OSTEO-FX would cause any harm to Opposer or the goodwill of Opposer's business.

Response to Opposer's Allegation Number 16

19. Respondent denies that Registration to the mark OSTEO-FX would cause any confusion in the marketplace as Respondent's products are sold via Multi-level Marketing

(MLM) and are not sold to the general public through retail outlets. Respondents and Opposer's products would not be displayed or sold in a manner that would place the products in competition on a shelf.

Response to Opposer's Allegation Number 17

20. Respondent denies that registration of the mark OSTEO-FX will result in any dilution of the Opposer's mark whatsoever as Respondent's products are sold via Multi-level Marketing techniques and are not in the same or similar distribution channels. Furthermore, a search of the word "Osteo," the only similarity between the marks, would appear to show that the word occupies an already crowded field and thus already subject to dilution, if any.

Affirmative Defense

(Right to Add Affirmative Defenses)

21. The answering Respondent reserves the right to amend this Answer to add affirmative defenses when they become known, after further investigation and discovery is taken in this case.

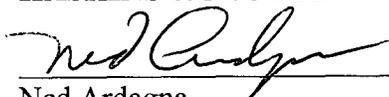
Prayer

WHEREFORE, Respondent denies that Opposer will be damaged in any way by the registration of the mark OSTEO-FX and the registration must be permitted.

Please recognize Steven W. Haskins and Ned Ardagna as attorneys for the Respondent and the Law Office of Haskins & Associates, 4045 Bonita Road, Suite 206, Bonita, CA 91902.

Dated: April 2, 2002

HASKINS & ASSOCIATES



Ned Ardagna,
Attorney for Respondent

PROOF OF SERVICE

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

Numico Financial Services vs. Joel D. Wallach
Opposition No. 91150888

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action.

On April 2, 2002, I served the following documents described as:

ANSWER TO NOTICE OF OPPOSITION

on all Parties in this action by placing in a separate envelope, with postage fully prepaid for each addressee named below, for collection and mailing on April 2, 2002, following the ordinary business practices of Haskins and Associates at 4045 Bonita Road, Suite 206, Bonita California. I certify that I am familiar with the ordinary business practice of my place of employment with regard to collection for mailing with the United States Postal Service.

Kenneth Strick, Esq.
6111 Broken Sound Parkway, N.W.
Boca Raton, Florida 33487

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 2, 2002, at Bonita, California.


Vangie Samson