

# TTAB

Attorney's Reference No. 009151.M001

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

Ivax Research, Inc.,

Opposer,

v.

ENTpro HB,

Applicant.

Mark: NASALINE  
Serial No.: 76/371,804  
Filed: February 15, 2002  
Published: May 18, 2004

Opposition No. 91161624

Serial No. 76/371,804

### ANSWER TO NOTICE OF OPPOSITION

Applicant ENTpro HB by and through its undersigned attorneys of record answers the Notice of Opposition as follows;

1. In answering the preface of the Notice of Opposition, Applicant denies any and all allegations and inferences that Opposer would be damaged by registration of the Applicant's mark.
2. In answering Paragraph 1 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.



3. In answering Paragraph 2 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.
4. In answering Paragraph 3 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.
5. In answering Paragraph 4 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.
6. In answering Paragraph 5 of the Notice of Opposition Applicant admits it has applied to register the mark NASALINE, U.S. Application Serial No. 76/371,804, but denies consumers would be easily confused in to believing that Applicant's products are related to Opposers's products due to the adoption of the term NASALINE.
7. In answering Paragraph 6 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.

8. In answering Paragraph 7 of the Notice of Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein thus denying same.
9. In answering Paragraph 8 of the Notice of Opposition, Applicant denies same.
10. In answering Paragraph 9 of the Notice of Opposition, Applicant denies same.

### **AFFIRMATIVE DEFENSES**

In further answer to the Notice of Opposition without waiver of any objection or an admission of sufficiency of the Notice of Opposition, Applicant asserts upon information and belief that:

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.
2. The prefix NASAL in the Opposer's mark is clearly descriptive and highly diluted as a trademark formative, and hence Opposer's purported rights extend no further than to the specific mark which Opposer alleges it owns, which is not the same or confusingly similar to Applicant's mark.

3. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

4. Applicant's mark in its entirety is sufficiently distinctively different from Opposer's mark to avoid confusion, deception, or mistake as to the source or sponsorship or association of Applicant's goods.

5. Applicant's mark, when used on Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

**RELIEF REQUESTED**

WHEREFORE, Applicant respectfully requests that this opposition proceeding be dismissed, with prejudice and that a Notice of Allowance issue to Applicant for its mark.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: September 9, 2004

By:

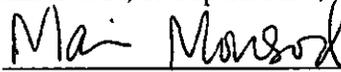


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**CERTIFICATE OF MAILING:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB – NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on September 9, 2004



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Marie Monsod

September 9, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on the Attorney for Opposer, at the stated address:

Lisa A. Pieroni  
Kirschstein, Ottinger, Israel & Schiffmiller  
489 Fifth Avenue  
New York, New York 10017

by first class mail, postage prepaid on September 9, 2004.

By: Marie Monsod  
Marie Monsod