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

Proceeding	91166451
Party	Defendant Nutri/System IPHC, Inc. Nutri/System IPHC, Inc. Suite 1704 300 Delaware Avenue Wilmington, DE 19801
Correspondence Address	Timothy J. Szuhaj Spector Gadon & Rosen, P.C. Building 1, Suite 203 ,1000 Lenola Road Maple Shade, NJ 08052
Submission	Answer
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Date	11/11/2005
Attachments	Answer 91166451.pdf (4 pages)

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

Yoplait Marques Internationales

Opposer,

v.

Nutri/System IPHC, Inc.,

Applicant.

Opposition No.: 91166451

ANSWER

November 11, 2005

TTAB
USPTO
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION

In response to the Notice of Opposition issued by the Board on September 2, 2005, Nutri/System IPHC, Inc. ("Applicant") hereby responds to Yoplait Marques Internationales ("Opposer") as follows:

1. Admitted.

2. In answer to the averments of paragraph 2 of the Notice of Opposition, Applicant admits the averments as to Opposer's ownership of the mark set forth therein, but Applicant asserts that the remaining averments of paragraph 2 constitute conclusions of law to which no response is required. To the extent that a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the paragraph and based thereon denies each and all of these averments.

3. Admitted.

4. In answer to the averments of paragraph 4 of the Notice of Opposition, Applicant admits the averments as to its intended use in Class 44, but Applicant asserts that the remaining averments of paragraph 4 constitute conclusions of law to which no response is required. To the extent that a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the paragraph and based thereon denies each and all of these averments.

5. The averments in paragraph 5 of the Notice of Opposition constitute conclusions of law to which no response is required. To the extent that a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the paragraph and based thereon denies each and all of these averments.

6. The averments in paragraph 6 of the Notice of Opposition constitute conclusions of law to which no response is required. To the extent that a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the paragraph and based thereon denies each and all of these averments.

7. The averments in paragraph 7 of the Notice of Opposition constitute conclusions of law to which no response is required. To the extent that a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the paragraph and based thereon denies each and all of these averments.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts that:

FIRST AFFIRMATIVE DEFENSE

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.

SECOND AFFIRMATIVE DEFENSE

The terms "NOURISH" and "NOURICHE" are highly diluted as trademark formatives, and, therefore are "weak," and Opposer's purported rights, if any, extend no further than to the specific marks which Opposer alleges it owns, which are not the same as or confusingly similar to Applicant's mark in terms of connotation, appearance and/or pronunciation.

THIRD AFFIRMATIVE DEFENSE

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.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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.

SIXTH AFFIRMATIVE DEFENSE

As Opposer's and Applicant's customers are highly sophisticated, there is no likelihood of confusion, deception or mistake.

SEVENTH AFFIRMATIVE DEFENSE

Due to the coexistence of numerous third-party marks containing or consisting of the term NOURISH for goods similar or related to Opposer's goods, there is no likelihood of confusion, deception or mistake between Opposer's mark and Applicant's mark.

EIGHTH AFFIRMATIVE DEFENSE

Applicant alleges Opposer is barred due to the equitable doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

Applicant alleges Opposer is barred due to the equitable doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

Applicant alleges Opposer is barred due to the equitable doctrine of acquiescence.

RELIEF REQUESTED

WHEREFORE, Applicant respectfully requests that this opposition proceeding be dismissed, with prejudice.

Dated: November 11, 2005

Respectfully submitted,

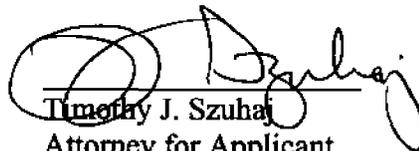
SPECTOR GADON & ROSEN, P.C.

By: 
Timothy J. Szuhaj
Counsel for Nutri/System IPHC, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned has this day served a true and correct copy of the Applicant's Answer to Notice of Opposition by regular mail to:

Leslie Bertagnolli
Baker & McKenzie LLP
130 E. Randolph Drive
Suite 3500, One Prudential Plaza
Chicago, IL 60601


Timothy J. Szuhaj
Attorney for Applicant

Dated: November 11, 2005