

ESTTA Tracking number: **ESTTA69947**

Filing date: **03/08/2006**

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

Proceeding	91168885
Party	Defendant GRASSHOPPER PACKING COMPANY, LLC GRASSHOPPER PACKING COMPANY, LLC 412 WEST SAINT JOHN STREET GIRARD, KS 66743
Correspondence Address	THOMAS H. VAN HOOZER HOVEY WILLIAMS LLP 2405 GRAND BLVD STE 400 KANSAS CITY, MO 64108-2525
Submission	Answer
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Date	03/08/2006
Attachments	Answer to Notice of Opposition.pdf (4 pages)

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

Societe des Produits Nestle, S.A.)	
Opposer,)	
)	Opposition No. 911168885
v.)	
)	Application Serial No.: 78/601,305
Grasshopper Packing)	
Company, LLC)	
Applicant.)	Mark: BENEDERM

ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant, Grasshopper Packing Company, LLC (hereinafter “Applicant” or “Grasshopper”) and answers the Notice of Opposition filed by Societe Produits Nestle S.A. (hereinafter “Opposer” or “Nestle”) in the above-captioned opposition proceedings as follows:

In regard to the first unnumbered paragraph, Applicant denies that Opposer has any legitimate rights whereby it would be damaged by issuance of a registration for the above-referenced application and is otherwise without sufficient information to form a belief as to the truth of the allegations stated therein and therefor denies the same.

With respect to the first paragraph preceding paragraph 2 of the Notice of Opposition, the paragraph is incomplete, beginning with a partial sentence at the top of page 2 of the Notice of Opposition, and thus unintelligible, and Applicant therefore denies the same. Applicant admits the portions of this to the extent that the subject application was published in the Official Gazette on October 11, 2005, and that Societe des Produit Nestle S.A. was granted extensions until February 8, 2006 to oppose the subject application Serial No. 78/601,305.

With respect to paragraph 2 of the Notice of Opposition, Applicant is without sufficient information to form a belief as to the truth of the allegations stated therein, and therefore denies the same.

With respect to paragraph 3 of the Notice of Opposition, Applicant is without information sufficient to form a belief as to the truth of the allegations stated therein, and therefore denies the same.

With respect to paragraph 4 of the Notice of Opposition, Applicant is without information sufficient to form a belief as to the truth of the allegations stated therein, and therefore denies the same.

With respect to paragraph 5 of the Notice of Opposition, Applicant is without information sufficient to form a belief as to the truth of the allegations stated therein, and therefore denies the same.

With respect to paragraph 6 of the Notice of Opposition, Applicant denies the same.

With respect to paragraph 7 of the Notice of Opposition, Applicant admits that it has not made use of the mark which is the subject of the Notice of Opposition prior to the dates of use alleged in Registration Nos. 2,521,244 and 2,730,615, but is without information sufficient to form a belief as to the truth of whether Opposer is the owner of those registrations or whether the dates of use as alleged are true and accurate, and therefore denies the same.

Applicant denies the allegations of paragraph 8 of the Notice of Opposition.

Applicant denies the allegations of paragraph 9 of the Notice of Opposition.

Applicant denies the allegations of paragraph 10 of the Notice of Opposition.

Applicant denies the allegations of paragraph 11 of the Notice of Opposition.

Applicant denies the allegations of paragraph 12 of the Notice of Opposition.

AFFIRMATIVE DEFENSE

Applicant is the owner of U.S. Trademark Registration No. 1,734,131 for the mark LAMADERM for “pet health food for dogs.” Such registration is alive, in good standing, and

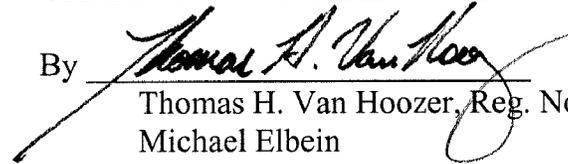
incontestible, and Applicant's mark BENEDERM is a part of its family of marks including the suffix "derm" for pet food, and thus not likely to be confused with either of the marks asserted by Opposer. The only common element between Applicant's BENEDERM mark and the marks asserted by Opposer is the weak and laudatory term "bene", meaning good, such that when taken as a whole, Applicant's mark is not likely to be confused with either of the marks asserted by Opposer.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and that Applicant's application be passed to registration.

Respectfully submitted,

GRASSHOPPER PACKING COMPANY, LLC.

By



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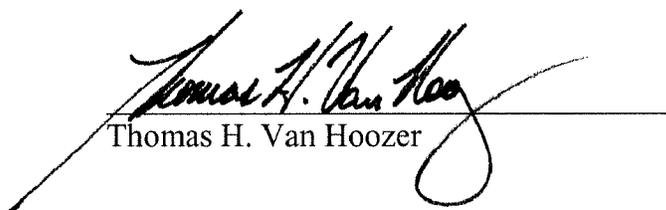
Attorneys for Applicant

Date: March 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Answer to Notice of Opposition was sent by first class mail, postage prepaid, this 8th day of March, 2006, addressed to:

Thomas A. Polcyn, Esq.
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Thomas H. Van Hoozer