

Nevada, having a place of business at 1800 Century Park East, Los Angeles, California 90067-1501.

2. In response to Paragraph 2 of the NOTICE OF OPPOSITION, Herbalife admits that it seeks to register trademark application Serial No. 78/620,254 in International Class 32 for the mark FIZZ. FOCUS. FUEL GOOD! in connection with non-alcoholic beverages, namely, sports drinks, energy drinks, effervescent drinks and soft drinks; syrups, mixers, powders, concentrates and effervescent tablets used in the preparation of soft drinks, energy drinks, sports drinks and effervescent drinks. Herbalife admits that trademark application Serial No. 78/620,254 was filed on April 29, 2005 with the intent to use the FIZZ. FOCUS. FUEL GOOD! mark in commerce.

3. In response to Paragraph 3 of the NOTICE OF OPPOSITION, Herbalife admits that it seeks to register trademark application Serial No. 78/526,845 in International Class 32 for the mark FUEL GOOD! in connection with non-alcoholic beverages, namely, sports drinks, energy drinks, effervescent drinks and soft drinks; syrups, mixers, powders, concentrates and effervescent tablets used in the preparation of soft drinks, energy drinks, sports drinks and effervescent drinks. Herbalife admits that trademark application Serial No. 78/526,845 was filed on December 3, 2004 with the intent to use the FUEL GOOD! mark in commerce.

4. Herbalife is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

5. In response to Paragraph 5 of the NOTICE OF OPPOSITION, Herbalife denies that "[a]ll or some of these marks are inherently distinctive individually and the 'family' of these marks employing the term FUEL is inherently distinctive as a whole." Herbalife is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 5 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

6. Herbalife is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

7. Herbalife is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 7 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

8. Herbalife denies the averments of Paragraph 8 of the NOTICE OF OPPOSITION.

9. In response to Paragraph 9 of the NOTICE OF OPPOSITION, Herbalife denies that "[a]s a result, Opposer has established substantial recognition and secondary meaning in the aforesaid marks, which identify Opposer's products and represent the valuable goodwill of Opposer in its business." Herbalife is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 9 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

10. Herbalife denies the averments of Paragraph 10 of the NOTICE OF OPPOSITION.

11. In response to Paragraph 11 of the NOTICE OF OPPOSITION, Herbalife denies that the "above referenced Registrations" "are widely recognized as representing goods provided by Opposer." Herbalife is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 11 of the NOTICE OF OPPOSITION and, on that basis, denies each and every such averment.

12. Herbalife denies the averments of Paragraph 12 of the NOTICE OF OPPOSITION.

13. Herbalife denies the averments of Paragraph 13 of the NOTICE OF OPPOSITION.

14. Herbalife denies the averments of Paragraph 14 of the NOTICE OF OPPOSITION.

AFFIRMATIVE DEFENSES

15. Opposer's alleged "[] Fuel" marks, registrations, and "family" of marks are weak and subject to a pre-existing dilution of the term "Fuel" in a marketplace that is crowded with other marks that incorporate this term.

16. Upon information and belief, Opposer is precluded by the equitable doctrines of laches, estoppel, and acquiescence from opposing Herbalife's U.S. trademark application Serial No. 78,620,254 and/or U.S. trademark application Serial No. 78/526,845.

17. Herbalife hereby reserves all rights to assert additional defenses, should Herbalife learn of grounds for such defenses during the course of this proceeding.

PRAYER

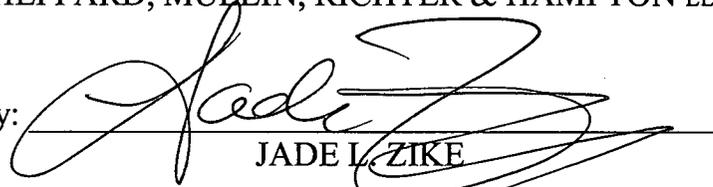
WHEREFORE, Herbalife prays that Opposer take nothing by its NOTICE OF OPPOSITION and that the same be denied and dismissed with prejudice.

May 8, 2006

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By:



JADE L. ZIKE

Attorneys for Applicant
HERBALIFE INTERNATIONAL, INC.

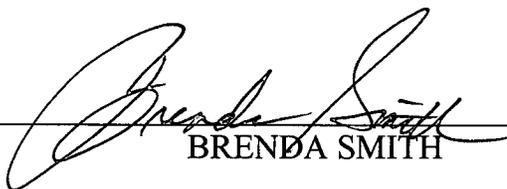
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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this ANSWER TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on May 8, 2006.

By



BRENDA SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION upon Chester Rothstein, Esq., counsel for Opposer, at Amster, Rothstein & Ebenstein LLP, 90 Park Avenue, New York, New York 10016, via first class mail, postage prepaid, on May 8, 2006.

By  _____
BRENDA SMITH