TTAB

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

GOLDING FARMS FOODS, INC.,	)	
Opposer,	)	Opposition No. 91194024 Serial No. 77731547 Mark: NATURAL HEALTHY SPRING WATER
v.	)	
JAQUEZ, RAYMOND d/b/a MULTI VITAMIN ENERGY CORP.,	)	
Applicant	)	

04/21/2010 SWILSON1 00000007 77731547
01 FC:6402 300.00 OP

ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM

Applicant, Raymond Jaquez, by and through his attorney, hereby answers the Notice of Opposition filed by Golding Farms Foods, Inc., as follows:

1. Applicant admits the allegations contained in paragraph 1 of the Notice of Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Opposition and therefore applicant denies those allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Opposition and therefore applicant denies those allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Opposition and therefore applicant denies those allegations.

[redacted]
04-19-2010

U.S. Patent & TM Off. TM Mail Rept. Dt. #73

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Opposition and therefore applicant denies those allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Opposition and therefore applicant denies those allegations.

7. Applicant denies each and every allegation contained therein of paragraph 7 of the Opposition.

8. Applicant denies each and every allegation container therein of paragraph 8 of the Opposition.

AFFIRMATIVE DEFENSES

9. Opposer has failed to plead facts sufficient to support its claim of confusion, mistake or deception under Section 1052(d) and therefore this opposition is subject to dismissal.

10. There are numerous registered and pending marks comprised of or including the word NATURAL in connection with beverages. Opposer neither owns exclusive rights to the word NATURAL nor the word HEALTHY for beverages and Opposer's mark should be afforded a narrow range of protection.

11. Applicant's Mark for NATURAL HEALTHY SPRING WATER and Opposer's Mark for NATURALLY HEALTHY are dissimilar in that they differ significantly in appearance, sound and commercial impression. The differences in the marks are sufficient to preclude a likelihood of confusion.

12. Opposer's alleged Mark for "bottled water" is an invalid common law mark.

13. Opposer's alleged use of Opposer's Mark as applied to the goods of "bottled water" lacks secondary meaning.

14. Applicant's Mark in its entirety when used in connection with Applicant's goods is dissimilar to Opposer's Mark in its entirety used in connection with Opposer's goods, unlikely to cause confusion, mistake or deception and without injury to the Opposer and the public.

15. Opposer identifies the goods registered for Opposer's Mark and then adds the goods "bottled water" to this Opposition when "bottled water" goods is a distant good from Opposer's registered goods and not an identified good in Opposer's registrations; Applicant respectfully submits upon information and belief that Opposer is acting purposefully without notice of said goods and in bad faith.

16. Opposer opposes Applicant's Mark for "bottled water drinking water, namely, spring water" goods when the goods identified in Opposer's registered mark fails to identify "bottled water" as goods or water related goods in any form in any of Opposer's registrations. Applicant respectfully requests that Opposer be estopped from asserting an Opposition under §1052(d) that identifies goods unconnected and not identified in Opposer's list of registered goods.

17. Opposer's alleged use of Opposer's Mark with "bottled water" is at best weak and entitled to only the narrowest protection.

18. Applicant is the owner of registration no. 2999319 that was registered on July 18, 2005 on the supplemental register for the word mark NATURAL HEALTHY WATER in international class 005 for "bottled vitamin enriched water". Opposer has taken no action on this registered mark. Applicant respectfully submits that Opposer's opposition to Applicant's opposed Mark in whole or part is barred by the doctrines of laches and acquiescence.

19. Opposer's claim against Applicant's Mark, in whole or in part, are barred because Applicant has acted within its rights and in good faith.

20. Upon information and belief, Applicant's Mark has priority over Opposer's Mark as allegedly applied under common law to the goods for "bottled water".

COUNTERCLAIM

21. Applicant seeks the cancellation of Opposer's mark in whole or in part to include, inter alia, the restriction of Opposer's goods on the register under Sec. 18. Opposer's list of registered goods do not extend to encompass "bottled water" goods in any form and Applicant asserts that Opposer's opposition is based on the additional alleged use the Opposer's Mark on unconnected goods under common law to those goods

identified on Opposer's registration. Opposer's registered goods are significantly different from Applicant's goods in both Applicant's NATURAL HEALTHY SPRING WATER and Applicant's registered Mark no. 2999319 for NATURAL HEALTHY WATER. Applicant respectfully submits that Opposer's registered goods for Opposer's Mark are thus ambiguous and undefined. Applicant's goods for Applicant's Marks are and have been in use in good faith for goods that are distinct and narrowly defined. Opposer is not using Opposer's Mark on Applicant's goods. Applicant respectfully requests that Opposer's present registration and any future registrations be restricted so as to accommodate the registration of Applicant's Mark NATURAL HEALTHY SPRING WATER for "bottled water drinking water, namely, spring water" and registered Mark NATURAL HEALTHY WATER for "bottled vitamin enriched water" and thereby avoid a finding of likelihood of confusion.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety.

DATED this 12th day of April 2010.

Respectfully submitted,

Raymond Jaquez d/b/a Multi
Vitamin Energy Corp.

By his Attorney,

Harold G. Furlow, Esq.
260 West Main Street, Suite 10
Bay Shore, New York 11706
Tel: (631) 581-6700
Fax: (631) 581-6710

NOTICE OF ELECTRONIC MAILING

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, Attn: TTAB, this 12th day of April, 2010.

Harold G. Furlow, Esq.
Attorney for Applicant
New York State Bar No. 4040820
United States Patent and Trademark Office Registration No. 43,621
Attorney for Applicant
Telephone: (631) 581-6700
Facsimile: (631) 581-6710

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing ANSWER AND COUNTERCLAIM upon counsel by depositing a copy in the United States Mail with sufficient postage for first class mail in an envelope addressed to the following:

Blanco Tackabery & Matamoros, P.A.
P.O. Drawer 25008
Winston Salem, NC 27114-5008 on this 12th day of April 2010.

Harold G. Furlow, Esq.
Attorney for Applicant
New York State Bar No. 4040820
United States Patent and Trademark Office Registration No. 43,621
Attorney for Applicant
Telephone: (631) 581-6700
Facsimile: (631) 581-6710

CERTIFICATE OF MAILING

I hereby certify that this correspondence, Answer and Counterclaim, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22314 by depositing a copy in the United States Mail with sufficient postage for first class mail in an envelope

on this 12th day of April 2010.

Harold G. Furlow, Esq.
Attorney for Applicant

HAROLD G. FURLOW
ATTORNEY AT LAW
260 MONTAUK HIGHWAY, SUITE 10
BAY SHORE, NEW YORK 11706
(631) 581-6700
FAX: (631) 581-6710
HAROLD_FURLOW@HOTMAIL.COM

April 12, 2010

Via Electronic Filing and First Class Mail

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313

Re: Opposition No. 91194024; Golding Farms Foods, Inc. v. Raymond Jaquez d/b/a Multi Vitamin Energy Corp.

Dear Trademark Trial and Appeal Board:

I attach a copy of the Answer and Counterclaim filed in the above-identified opposition. The attached Answer and Counterclaim was also filed electronically on this same date.

I attach check for $300 for the above-identified Counterclaim.

Very truly yours,

Harold G. Furlow
Attorney for Applicant

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: Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313 by depositing a copy in the United States Mail with sufficient postage for first class mail in an envelope on this 12th day of April 2010.

Harold G. Furlow, Esq.
Attorney for Applicant