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

Proceeding	91195027
Party	Defendant Cytosport, Inc.
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Opposed Mark: MUSCLE MILK PROH2O
U.S. Trademark Application Serial No.: 77/750,913

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

HANSEN BEVERAGE COMPANY,

Opposer/Counter-Registrant,

v.

CYTOSPORT, INC.,

Applicant/Counter-Petitioner.

Opposition No. 91195027

ANSWER, AFFIRMATIVE DEFENSES

CytoSport, Inc. (hereinafter “CytoSport”), a corporation existing under the laws of the State of California, having a principal place of business at 4795 Industrial Way, Benicia, CA 94510 responds to Hansen Beverage Company’s (hereinafter “Hansen Beverage”) Notice of Opposition of the mark MUSCLE MILK PROH2O (Application Serial No. 77/750,913) as follows:

With regards to the introductory paragraph of Hansen Beverages’ Notice of Opposition, CytoSport denies the averment that Hansen Beverage will be damaged by registration of the trademark that is the subject of trademark application Serial No. 77/750,913. CytoSport is

without knowledge or information sufficient to form a belief as to the truth of the remaining averments in the introductory paragraph of Hansen Beverages' Notice of Opposition, and therefore denies the same.

1. Admit.

2. CytoSport admits that Application Serial No. 77/750913 was filed on June 3, 2009 by CytoSport and that the application speaks for itself. CytoSport denies the remaining averments in paragraph 2 of Hansen Beverages' Notice of Opposition.

3. CytoSport denies the averments contained in Paragraph 3 of Hansen Beverages' Notice of Opposition.

4. CytoSport does not sell a powdered nutritional supplement under the mark MUSCLE MILK PROH2O and therefore denies the averments contained in Paragraph 4 of Hansen Beverages' Notice of Opposition.

5. CytoSport does not market, offer for sale, or sell a powdered nutritional supplement under the mark MUSCLE MILK PROH2O and therefore denies the averments contained in Paragraph 5 of Hansen Beverages' Notice of Opposition.

6. CytoSport does not market, offer for sale, or sell a powdered nutritional supplement under the mark MUSCLE MILK PROH2O and therefore denies the averments contained in Paragraph 6 of Hansen Beverages' Notice of Opposition.

7. CytoSport denies the averments contained in Paragraph 7 of Hansen Beverages' Notice of Opposition.

8. CytoSport denies the averments contained in Paragraph 8 of Hansen Beverages' Notice of Opposition.

Any remaining allegations do not require an admission or denial by Applicant. To the extent a response is required, the allegations are denied. Unless specifically admitted herein, all allegations are denied. Applicant further denies that Opposer is entitled to any relief, including the relief requested in the Notice of Opposition.

WHEREFORE, Applicant respectfully requests that Opposition No. 91195027 be dismissed with Prejudice and that CytoSport's MUSCLE MILK PROH2O mark be allowed.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Hansen Beverage has not stated a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

CytoSport's MUSCLE MILK PROH2O mark is inherently distinctive when used in connection with the goods listed in U.S. Trademark Registration No. 77/750913.

THIRD AFFIRMATIVE DEFENSE

To the extent that a finder of fact determines that the MUSCLE MILK PROH2O mark is not inherently distinctive of the goods listed in U.S. Trademark Registration No. 77/750913, CytoSport submits that the MUSCLE MILK PROH2O mark has secondary meaning associated with such goods.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, CytoSport's registration of MUSCLE MILK PROH2O will not damage Opposer.

FIFTH AFFIRMATIVE DEFENSE

Opposer is barred from opposing U.S. Trademark Registration No. 77/750913 by the doctrines of estoppel and/or unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Opposer is barred from opposing U.S. Trademark Registration No. 77/750913 by the doctrines of waiver, laches, and/or acquiescence.

There may be additional affirmative defenses to the opposition alleged by Hansen Beverage that are currently unknown to CytoSport. Therefore, CytoSport reserves the right to amend this answer to allege additional affirmative defenses in the event discovery of other information indicates they are appropriate.

DATED this 6th day of July, 2010.

Respectfully submitted,

/Jed H. Hansen/
Peter M. de Jonge
Jed H. Hansen
THORPE NORTH & WESTERN, LLP

Attorneys for Cytosport, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served upon Opposer's counsel by depositing a copy of the same with the United States Post Office via first class mail, postage prepaid, in an envelope addressed to:

Alina S. Morris
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street 14th Floor
Irvine, CA 92614

on this 6th day of July, 2010.

/s/ Tiffany L. Sisneros
Tiffany L. Sisneros