

ESTTA Tracking number: **ESTTA416299**

Filing date: **06/24/2011**

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

Proceeding	91195823
Party	Defendant NCA Biotech, Inc.
Correspondence Address	STANLEY T HSIAO NCA BIOTECH INC 4802 MURRIETA STREET CHINO, CA 91710 UNITED STATES stanleyth@ncabiotech.com, info@ncabiotech.com
Submission	Opposition/Response to Motion
Filer's Name	STANLEY T. HSIAO
Filer's e-mail	stanleyth@cpbio.com
Signature	/STANLEY T HSIAO/
Date	06/24/2011
Attachments	APP ANSWER AND AFFIRMITIVE DEFENSE OPPOSERS FIRST AMMENDED OPPOSITION.pdf (5 pages)(840466 bytes)

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

In the Matter of Application Serial No. 77/853.842
Published in the *Official Gazette* on March 30, 2010
Mark: CHAMPIONGRO

OMS Investments, Inc.	Opposer,	Opposition No. 91195823
vs.		
NCA Biotech, Inc.	Applicant.	APPLICANT'S ANSWER & AFFIRMATIVE DEFENSES TO OPPOSER'S FIRST AMENDED NOITCE OF OPPOSITION

I. ANSWER

COMES NOW Applicant and for answer to Opposer's First Amended Notice of Opposition, admits, denies and alleges as follows:

- 1.1 Answering Paragraph No. 1, Applicant admits the same.
- 1.2 Answering Paragraph No. 2, Applicant admits the same.
- 1.3 Answering Paragraph No. 3, Applicant has insufficient knowledge

of the facts asserted to form a basis for a belief as to the truth and veracity of the allegation set forth therein, and therefore denies such allegation.

- 1.4 Answering Paragraph No. 4, Applicant has insufficient knowledge of the facts asserted to form a basis for a belief as to the truth and veracity of the allegation set forth therein, and therefore denies such allegation.

1.5 Answering Paragraph No. 5, Applicant has insufficient knowledge of the facts asserted to form a basis for a belief as to the truth and veracity of the allegation set forth therein, and therefore denies such allegation..

1.6 Answering Paragraph No. 6, Applicant has insufficient knowledge of the facts asserted to form a basis for a belief as to the truth and veracity of the allegation set forth therein, and therefore denies such allegation..

1.7 Answering Paragraph No. 7, Applicant denies the same.

1.8 Answering Paragraph No. 8, Applicant has insufficient knowledge of the facts asserted to form a basis for a belief as to the truth and veracity of the allegation set forth therein, and therefore denies such allegation.

1.9 Answering Paragraph No. 9, Applicant denies the same.

1.10 Answering Paragraph No. 10, Applicant denies the same.

1.11 Answering Paragraph No. 11, Applicant denies the same.

1.12 Answering Paragraph No. 12, Applicant denies the same.

1.13 Answering Paragraph No. 13, Applicant denies the same.

1.14 Answering Paragraph No. 14, Applicant denies the same.

1.15 Answering Paragraph No. 15, Applicant denies the same.

1.16 Answering Paragraph No. 16, Applicant denies the same.

1.17 Answering Paragraph No. 17, Applicant denies the same.

1.18 Answering Paragraph No. 18, Applicant denies the same.

1.19 Answering Paragraph No. 19, Applicant denies the same.

II. AFFIRMATIVE DEFENSES

Further answering Opposer's Opposition by way of affirmative defenses, and without prejudice to any alternative position which it may take herein, Applicant further alleges:

2.1 All allegations contained in Paragraphs 1.1 through 1.19 above are re-alleged.

2.2 The Opposition should be dismissed because the Opposer fails to allege a claim which is sufficient for the TTAB to sustain the Opposition. The common element which is distinctive in Opposer's family of marks as alleged in Paragraph No. 3 is MIRACLE-GRO mark. But in other paragraphs of the Opposition, Opposer alleges that the distinctive common element is GRO mark. Opposer cannot claim two distinctive common elements in a family of marks.

2.3 The products of Opposer's subsidiaries, which appear in its website, do not have GRO in their product names.

2.4 GRO is not a recognizable common characteristic since there are many similar goods in the marketplace whose names contain the same prefix, suffix or syllable, namely, GRO.

2.5 The alleged element GRO is merely descriptive or highly suggestive, and cannot serve as the distinctive feature of a family of marks. GRO is an abbreviation of GROW, GROWING, or GROWTH

2.6 Opposer fails to engage in the conjoint advertising of the family of marks containing the alleged common element GRO.

2.7 since there are many similar goods on the market whose names also contain GRO, there cannot be the consumer's association of marks containing the common element with a single source of origin, namely, Opposer.

2.8 There are many products of Opposer, the names of which do not contain the alleged common element GRO.

2.9 The alleged common element GRO is incapable of establishing a family of marks since it is widely used for a variety of products.

2.10 The alleged common element GRO is used by Opposer for a variety of products, and mostly for fertilizer products, while Applicant's mark is for PGR product.

2.11 Opposer is guilty of laches since there are many similar goods on the market whose names or marks contain the same prefix, suffix or syllable.

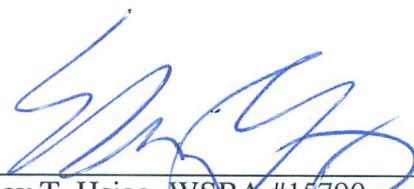
2.12 There is no settlement and release agreement between the parties.

WHEREAS, having fully answered the allegations contained in the Opposer's Opposition, and having set forth its affirmative defenses and counterclaim, Applicant prays for relief as follows:

A. For dismissal of Plaintiff's Complaint with prejudice, and without costs;

B. For such other and further relief as the Board may deem just and equitable.

DATED this 24th day of June, 2011.


Stanley T. Hsiao, WSBA #15790
Attorney for Applicant

Certificate of Service

The undersigned hereby certifies that a copy of this foregoing paper has been served upon Opposer's attorney of record and address below by First Class Mail and email on this date.

John Gary Maynard, III, Esq.
Hunton & Williams LLP
951 East Byrd Street
Riverfront Plaza, East Tower
Richmond, VA 23219-4074
Telephone (808) 788-8200

Dated: June 24, 2011



Linn Robinson