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

Proceeding	91200187
Party	Defendant Tanja Herbst
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Date	07/19/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/168,760**

Filed: **July 19, 2011**

For the Mark: **VENS NUTRITION**

Published for Opposition in the Official Gazette on: **May, 10 2011**

_____	x	
ULTIMATE NUTRITION, INC.,	:	
	:	
Opposer,	:	
v.	:	Opposition No. 91200187
	:	
TANJA HERBST	:	
	:	
Applicant.	:	
_____	x	

ANSWER TO NOTICE OF OPPOSITION

Applicant, TANJA HERBST, by her undersigned younsel, answer the Notice of Opposition of Opposer, Ultimate Nutrition, Inc., as follows:

With respect to the allegations contained in the preamble of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations of the allegations contained therein and therefore denies each and every allegation.

1. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1, and on that basis denies each and every allegation contained therein.

2. Applicant admits the information contained in Paragraph 2.

OPPOSER AND ITS TRADEMARKS

3. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3, and on that basis denies each and every allegation contained therein.

4. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4, and on that basis denies each and every allegation contained therein.

5. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, and on that basis denies each and every allegation contained therein.

6. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis denies each and every allegation contained therein.

7. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7, and on that basis denies each and every allegation contained therein; except admits, on the information and belief, that the records of the USPTO reflects that Opposer is the record owner of U.S. Trademark Registration No. 1541169 for the mark ULTIMATE NUTRITION, U.S. Trademark Registration No. 3088065 for the mark ULTIMATE NUTRITION THE FUTURE OF SPORTS NUTRITION, U.S. Trademark Registration No. 377646 for the mark ULTIMATE NUTRITION, U.S. Trademark Registration No. 3503661 for the mark ULTIMATE NUTRITION THE FUTURE OF SPORTS NUTRITION and U.S. Trademark 3909232 for the mark ULTIMATE NUTRITION, and further refers to such registration certificates for its complete and accurate content and states that to the extent the allegations of Paragraph 7 call for a legal conclusion, no response is required.

8. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8, and on that basis denies each and every allegation contained therein.

9. Applicant is presently without sufficient knowledge or information to form a belief as

to the truth of the allegations contained in Paragraph 9, and on that basis denies each and every allegation contained therein.

APPLICANT'S ACTIONS

10. Applicant admits the information contained in Paragraph 10.

11. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11, and on that basis denies each and every allegation contained therein.

12. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12, and on that basis denies each and every allegation contained therein.

PRIORITY AND LIKELIHOOD OF CONFUSION

13. Applicant repeats and realleges each and every allegation contained in Paragraphs 1-12 as if fully stated herein.

14. Applicant is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14, and on that basis denies each and every allegation contained therein.

15. Applicant denies the allegations contained in Paragraph 15.

16. Applicant denies the allegations contained in Paragraph 16.

17. Applicant denies the allegations contained in Paragraph 17.

NO INTENT TO USE

18. Applicant repeats and realleges each and every allegation contained in Paragraphs 1-17 as if fully stated herein.

19. Applicant denies the allegations contained in Paragraph 19.

20. Applicant denies the allegations contained in Paragraph 20.

AFFIRMATIVE DEFENSES

Without admitting or conceding that it has the burden of proof or persuasion with respect to the matters asserted below, the Applicant asserts the following affirmative defenses:

21. There is no likelihood of confusion, mistake or deception because inter alia, Applicant's mark and the pleaded mark of Opposer are not confusingly similar.

22. Opposer's claims are barred, in whole or in part, since there is no likelihood of confusion in the market place.

23. Opposer's claims are barred, in whole or in part, because the goods sold by the Applicant under her VENS NUTRITION mark are different from and/or not confusingly similar to the goods and services by Opposer's alleged trademarks and no consumers have been or are likely to be confused into believing that goods/or services offered and sold by Applicant originate from the same source as the goods and services offered and sold by the Opposer.

24. Opposer's claims are barred, in whole or in part, because Opposer has acted to restrain trade or injure competition and has committed other acts constituting misuse of trademarks and unfair competition.

25. Opposer expressly or by its conduct approved, authorized, accepted, or ratified the acts and/or transactions of which they complain and is thus barred from the remedies it seeks.

26. Opposer's claims are barred, in whole or in part, by the doctrine of estoppel.

27. Opposer's claims are barred, in whole or in part, by the doctrine of waiver.

28. Opposer's claims are barred, in whole or in part, by the doctrine of abandonment.

29. Opposer's claims are barred, in whole or in part, by the doctrine of unclean hands.

30. Opposer's claims are barred, in whole or in part, by the doctrine of laches and/or acquiescence.

31. Opposer's claims are barred, in whole or in part, by the doctrine of fraud on the United States Patent & Trademark Office.

32. Opposer has suffered no harm and/or irreparable harm.

33. The Applicant reserves the right to allege other affirmative defenses as they may become

known during the course of discovery, and hereby specifically reserves the right to amend their Answer to allege said affirmative defenses at such time as they become known.

34. Opposer does not have standing to bring the instant action against the Applicant.

WHEREFORE, Applicant prays that the Board Order the Opposition be dismissed with prejudice and that its registration issue forthwith.

Respectfully submitted,

Dated: July, 19, 2011

HUCKE & HUCKE LAW OFFICE

/M HUCKE/

Marijan Hucke
Attorney for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that on the 19th day of July, 2011, the foregoing Applicant's Answer to Notice of Opposition was served on Opposer by sending a copy thereof to:

William C. Wright
Epstain Drangel LLP
60 East 42nd Street, Suite 2410
New York, NY 10165
UNITED STATES

attorneys for Opposer, by first-class, postage-prepaid mail.

Dated: July 19, 2011

HUCKE & HUCKE LAW OFFICE

/M HUCKE/

Marijan Hucke
Attorney for Applicant

CERTIFICATE OF TRANSMISSION

Per 37 CFR §2.197, I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, P.O. Box 1451, Alexandria, Virginia 22313-1451 on July 19, 2011.

Dated: July 19, 2011

HUCKE & HUCKE LAW OFFICE

/M HUCKE/_____

Marijan Hucke
Attorney for Applicant