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7 Proceeding in pro per

8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
9 **BEFORE THE TRADEMARK TRIALS AND APPEALS BOARD**

10 In the matter of Trademark Application Serial Number 85253122

11 For the mark: Dherbs [Dherbs.com]

12 Applicant: Jabir Abdul Akbar

13 Filed on February 28, 2011

14 DHERBS HEALTH EMPORIUM, INC, a ]  
15 California corporation; DJEHUTY ]  
16 HERBACEUTICALS, a California general ]  
17 Partnership, ]

18 Opposers ]

19 vs. ]

20 JABIR ABDUL AKBAR, an Individual; ]  
21 a/k/a DJEHUTY MA'AT-RA, an Individual ]

22 Applicant ]

**Applicant Jabir Abdul Akbar**  
**Answer To Opposition Of**  
**Trademark Registration**



09-09-2011

1 Applicant JABIR ABDUL AKBAR (a/k/a Djehuty Ma'at-Ra), answer  
2 Opposition of Plaintiffs DHERBS HEALTH EMPOROIUM, INC., and DJEHUTY  
3 HERBACEUTICALS, in this case as follows:

4 1. Applicant is without sufficient information or belief or deny the allegations  
5 of ¶ 1 of the Opposition.

6 2. Applicant admit in part and deny in part the allegations of ¶ 2 of the  
7 Opposition. Opposer DHE is an on-line seller of various herbal products and  
8 literature (all created by Applicant as sole owner and creator and who in fact gave  
9 notice to partners who then signed a contract understanding and accepting the  
10 foregoing). Applicant deny that DHE is predecessor in interest and also deny that  
11 DHE owns and operates the internet website located at WWW.DHERBS.COM  
12 (hereinafter "Website") and the corresponding business.

13 3. Applicant deny the allegations of ¶ 3 of the Opposition.

14 4. Applicant deny the allegations of ¶ 4 of the Opposition.

15 5. Applicant admit in part and deny in part the allegations of ¶ 5 of the  
16 Opposition. Applicant deny DHE CEO has licensed exclusive use of the URL to  
17 DHE. As stated in ¶ 3 of the Opposition, if DH (a general partnership) is the rightful  
18 owner of the mark, how could DHE CEO (an individual partner) have power to  
19 license, absent notice to the partners of the partnership that the mark was his  
20 individual property and not property of the partnership?  
21

22 6. Applicant deny the allegations of ¶ 6 of the Opposition.

23 7. Applicant deny the allegations of ¶ 7 of the Opposition.

24 8. Applicant deny the allegations of ¶ 8 of the Opposition.

25 9. Applicant deny the allegations of ¶ 9 of the Opposition.

26 10. Applicant admit the allegations of ¶ 10 of the Opposition.

27 11. Applicant is without sufficient information or belief or deny the  
28

1 allegations of ¶ 11 of the Opposition.  
2

3 **AFFIRMATIVE DEFENSES**  
4

5 **First Defense**

6 The mark "DHERBS" stands for DJEHUTY HERBS (shortened form of  
7 DJEHUTY HERBACEUTICALS) and was first used in commerce by Applicant in  
8 early 2002, c. March 2002, nearly 20 months before Applicant entered into  
9 partnership with DHE CEO (Ahman Dolphin), and thus established first use of the  
10 mark in commerce establishing trademark rights.  
11

12 **Second Defense**

13 Domain name registration does not guarantee trademark rights. It is basic  
14 knowledge and understanding that domain name registration simply means a person  
15 has the right to use that specific Internet address. It does not constitute a trademark,  
16 especially since the name or mark "Dherbs" (Dherbs.com) has already been  
17 trademarked by Applicant who used it in commerce 20 months before it became a  
18 domain name. Application of a domain name or Internet address is not the  
19 equivalent of applying for or even establishing a trademark. Customers associate the  
20 name/mark "Dherbs" ("Dherbs.com") with herbal products created exclusively by  
21 Applicant (and which products existed before the partnership was formed and in  
22 which Applicant gave constructive notice to all partners that his herbal formulations  
23 where his private property and would not be turned over to the partnership and all  
24 partners were aware and agreed by signing a contract). In addition, customers also  
25 associate the name/mark "Dherbs" ("Dherbs.com") with Applicant exclusively.  
26

27 DHE CEO was not the first to use the mark/name in connection with the type  
28

1 of services and products (herbal) the mark/name were used for by Applicant.

2 The first person or business to use a trademark in the marketplace owns it  
3 against later users.

4 **Third Defense**

5 A civil suit for involuntary dissolution of DHE in accordance pursuant to  
6 California statute, Cal. Corp. Code §1800, case number 11C03285, has been filed  
7 against DHE and DHE CEO with the Superior Court of California, so DHE will  
8 soon be nonexistent.

9 Furthermore, a federal action against DHE CEO seeking, among other things,  
10 declaratory relief pertaining to the trademark ownership has been commenced in the  
11 United States District Court, Central District of California, Western Division. The  
12 case number is CV11-06346 GAF (FMOx).

13 For the reasons above, Applicant request that the application for registration,  
14 serial number 85253122 be GRANTED.

15  
16  
17 Dated this 6<sup>th</sup> day of September, 2011

18  
19 **JABIR ABDUL AKBAR**

20  
21 By Jabir Abdul Akbar  
22 Jabir Abdul Akbar

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**CERTIFICATE OF SERVICE**

This is to certify that I have on this 7<sup>th</sup> day of September, 2011, placed a true and exact copy of the document entitled

**Applicant Jabir Abdul Akbar Answer To Opposition Of Trademark Registration**

In the United States mail, in a sealed envelope with postage thereon fully prepaid, addressed to:

**Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451**

And

**Allan B. Gelbard, Esq,  
The Law Offices of Allan B. Gelbard  
15760 Ventura Boulevard, Suite 801  
Encino, CA 91436**

I am readily familiar with the ordinary practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Glendale, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing statement is true and correct.

Executed on September 7, 2011, at Glendale, California.

  
**JABIR ABDUL AKBAR**