

ESTTA Tracking number: **ESTTA431796**

Filing date: **09/22/2011**

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

Proceeding	91201229
Party	Defendant Vitamin Shoppe Industries Inc.
Correspondence Address	Todd Braverman, Esq. Pearl Cohen Zedek Latzer LLP 1500 Broadway, 12th Floor New York, NY 10036 trademarks@pczlaw.com
Submission	Answer
Filer's Name	Todd Braverman
Filer's e-mail	tm-uspto@pczlaw.com
Signature	/tjbraverman/
Date	09/22/2011
Attachments	Answer to Notice of Opposition - Joint Vitality - FINAL.pdf (7 pages)(71213 bytes)

2. With respect to the allegations contained in Paragraph 2 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

3. With respect to the allegations contained in Paragraph 3 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

4. With respect to the allegations contained in Paragraph 4 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

5. With respect to the allegations contained in Paragraph 5 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

6. With respect to the allegations contained in Paragraph 6 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

7. With respect to the allegations contained in Paragraph 7 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

8. With respect to the allegations contained in Paragraph 8 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except

admits, on information and belief, that the records of the USPTO reflect that Opposer is the record owner of U.S. Trademark Registration No 1706196 for the word mark VITALITY PAK; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 8 call for a legal conclusion, no response is required.

9. With respect to the allegations contained in Paragraph 9 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except admits, on information and belief, that the records of the USPTO reflect that Opposer is the record owner of U.S. Trademark Registration No 21208070 for the word mark VITALITY FOR LIFE; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 9 call for a legal conclusion, no response is required.

10. With respect to the allegations contained in Paragraph 10 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except admits, on information and belief, that the records of the USPTO reflect that Opposer is the record owner of U.S. Trademark Registration No 2656385 for the word plus design mark VITALITY FOR LIFE; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 10 call for a legal conclusion, no response is required.

11. With respect to the allegations contained in Paragraph 11 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except admits, on information and belief, that the records of the USPTO reflect that Opposer is the record

owner of U.S. Trademark Registration No 3929755 for the word mark VITALITY COLDWATER OMEGA-3; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 11 call for a legal conclusion, no response is required.

12. With respect to the allegations contained in Paragraph 12 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except admits, on information and belief, that the records of the USPTO reflect that Opposer is the record owner of U.S. Trademark Registration No 4005565 for the word mark VITALITY 4; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 12 call for a legal conclusion, no response is required.

13. With respect to the allegations contained in Paragraph 13 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation; except admits, on information and belief, that the records of the USPTO reflect that Opposer is the record owner of U.S. Trademark Registration No 4005566 for the word mark VITALITY 6; and further refers to such records of the USPTO for its complete and accurate content and states that to the extent the allegations of Paragraph 13 call for a legal conclusion, no response is required.

14. Admit.

15. With respect to the allegations contained in Paragraph 15 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

16. With respect to the allegations contained in Paragraph 16 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

17. With respect to the allegations contained in Paragraph 17 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

18. With respect to the allegations contained in Paragraph 18 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

19. With respect to the allegations contained in Paragraph 19 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

20. With respect to the allegations contained in Paragraph 20 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

21. With respect to the allegations contained in Paragraph 21 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

22. With respect to the allegations contained in Paragraph 22 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

23. With respect to the allegations contained in Paragraph 23 of the Notice of Opposition, Applicant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every such allegation.

24. With respect to the allegations contained in Paragraph 24 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

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

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

26. Opposer's claims are barred by the doctrines of laches and/or acquiescence.

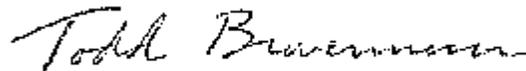
27. Opposer's claims are barred in whole or in part by the doctrine of unclean hands.

28. Opposer's claims are barred by the doctrines of estoppel and/or waiver.

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

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Respectfully submitted,



Todd Braverman
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Dated: September 22, 2011

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

In the Matter of U.S. Application No. 85071988

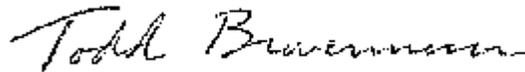
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MELALEUCA, INC.,)	
)	Opposition No 91201229
Opposer,)	
)	U.S. Application No. 85071988
v.)	
)	Mark: JOINT VITALITY
VITAMIN SHOPPE INDUSTRIES, INC.,)	
)	
Applicant.)	
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United States Patent & Trademark Office
Trademark Trial & Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

CERTIFICATE OF FIRST-CLASS MAIL SERVICE

I hereby certify that a copy of the foregoing "ANSWER TO NOTICE OF OPPOSITION" was mailed first-class mail, postage prepaid, to Krista Weber Powell, TraskBritt, P.C., 230 South 500 East Suite 300, Salt lake City, UT 84102, attorneys for Opposer, this 22nd day of September, 2011.

Date: September 22, 2011



Todd Braverman Esq.