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

Proceeding	91206915
Party	Plaintiff mybody, L.L.C.
Correspondence Address	MICHAEL D HOOL HOOL LAW GROUP PLLC 2398 E CAMELBACK RD STE 1020 PHOENIX, AZ 85016 UNITED STATES uspto@hoollawgroup.com
Submission	Motion for Summary Judgment
Filer's Name	Michael D. Hool
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Signature	/Michael D. Hool/
Date	02/20/2014
Attachments	EXECUTED and REDACTED MSJ.PDF(2101973 bytes)

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

In the matter of Application Serial No.: 85/597,114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.

Opposer,

vs.

ERIC LUCAS

Applicant.

Opposition No.: 91206915

**OPPOSER'S MOTION FOR
SUMMARY JUDGMENT**

Opposer, MyBody, L.L.C., respectfully moves the Board for summary judgment against the Applicant, Eric Lucas. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Opposer is entitled to summary judgment as a matter of law because the undisputed facts show that Opposer has standing, Opposer's mark has priority, and that any contemporaneous use of Applicant's applied-for mark presents a strong likelihood of consumer confusion.

This motion is supported by the attached Memorandum of Law, Statement of Material Facts, and the entire record before the Board.

Respectfully submitted,

Attorneys for MyBody, LLC

By: 

Michael D. Hool
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

Dated: February 20, 2014.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

As documented and set forth more in Opposer's Statement of Material Facts ("Opposer's SofF"), Opposer, My Body, LLC, operates a business which develops and sells skin care and related products. [Opposer's SofF ¶ 1]. As of January 28, 2011, Opposer began using "MYHERO" ("Opposer's Mark") in connection with the sales of its skin cream products. [Opposer's SofF ¶ 2]. Opposer expended substantial resources to advertise and promote its promote offered under Opposer's Mark. [Opposer's SofF ¶ 3].

Applicant, Eric Lucas, filed to register the mark "MY HERO" ("Applicant's Mark"), based upon a *bona fide* intent to use the mark, on April 13, 2012 (Applicant's Trademark Application referred to in this Motion for Summary Judgment as the "Opposed Application"). [Opposer's SofF ¶ 5]. Prior to that date, Applicant had not used Applicant's Mark in interstate or intrastate commerce. [Opposer's SofF ¶ 6]. Lastly, Applicant has claimed subsequent use of Applicant's Mark in connection with the sale of lotions as of March 15, 2013. [Opposer's SofF ¶ 7, 9].

The record shows that Opposer has standing to challenge the Opposed Application, prior proprietary rights in Opposer's Mark, and that any contemporaneous use of Applicant's Mark presents a strong likelihood of consumer confusion as to source of goods. Thus, Opposer is entitled to judgment as a matter of law.

II. ARGUMENT

Federal Rule of Civil Procedure 56 provides for summary judgment in favor of the movant "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment

as a matter of law.” Fed. R. Civ. P. 56(c). If the opposing party cannot respond to the properly made motion for summary judgment by showing specific facts that create a genuine issue for trial, the motion for summary judgment should be granted. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560 (Fed. Cir. 1987); Fed. R. Civ. P. 56(e). Opposer has standing, prior proprietary rights in Opposer’s Mark, and Applicant’s Mark is likely to cause confusion of source in the marketplace. The totality of the pleadings, discovery, and disclosure materials demonstrate that Applicant cannot raise any genuine issue of material fact regarding the aforementioned. Lastly, summary judgment is to be encouraged in appropriate cases so as to avoid needless expenditure of time and money by the parties and the Board. *Peterson’s Ltd. v. Consolidated Cigar Corp.*, 183 U.S.P.Q. 559 (T.T.A.B. 1974). For the forgoing reasons and in light of the tremendous delays already suffered by the parties, summary judgment should be entered in favor of Opposer.

a. Opposer has standing to challenge Applicant’s registration.

A person who believes that he would be damaged by the registration of a mark on the principal register may file an opposition. 15 U.S.C. § 1063 (2000). Standing requires only that the petitioner have a “real interest” in the proceeding. *Universal Oil Prod. Co. v. Rexall Drug & Chem. Co.*, 463 F.2d 1122, 1123 (C.C.P.A. 1972). Opposer has a direct and personal interest in the present case. If the Applicant were to use Applicant’s Mark for the goods identified in the Opposed Application, such use would be likely to cause confusion as to the source of Applicant’s goods. Consumers are likely to believe that such goods may originate from Opposer and any dissatisfaction with those goods would reflect upon and irreparably harm the goodwill and reputation of Opposer as embodied in Opposer’s Mark. As such, Opposer has standing to challenge the Opposed Application.

b. Opposer's has indisputable prior proprietary rights in the mark as it was used in commerce before Applicant filed the Opposed Application.

An opposer or petitioner can establish prior rights by demonstrating use of its mark in the United States before the applicant's or registrant's first use, whether actual or constructive, but the use must be sufficient to establish a proprietary interest in the mark. *Herbko Int'l, Inc. v. Kappa Books Inc.*, 308 F.3d 1156, 1662 (Fed. Cir. 2002). The Opposed Application was filed on April 13, 2012 based upon an alleged *bona fide* intention to use the mark in commerce. [Opposer's SofF ¶ 5]. Further, Applicant admits that it did not use the mark in interstate or intrastate commerce prior to filing the Opposed Application. [Opposer's SofF ¶ 6]. Applicant admitted that the actual first use of Applicant's Mark did not occur until March 15, 2013. [Opposer's SofF ¶ 9].

Conversely, Opposer cited actual use of the mark in commerce, beginning on January 28, 2011. [Opposer's SofF ¶ 2]. Such use was sufficient to establish a proprietary interest in the mark. *See Otto Roth & Co., v. Universal Foods Corp.*, 640 F. 2d 1317, 1320 (C.C.P.A. 1981) (Proof of proprietary rights in a term requires, *inter alia*, prior use in advertising or whatever other type of use may have developed a trade identity). The mark was used in advertisements for the product and served to develop a trade identify. [Opposer's SofF ¶¶ 2-3]. Opposer had used Opposer's Mark in commerce for more than fifteen (15) months before Applicant filed the Opposed Application and over two years before Applicant used its mark. There is no genuine dispute as to Opposer's priority.

c. There is a strong likelihood of consumer confusion as the marks are identical and are connected to similar products.

A trademark is not entitled to registration under the Lanham Act if it so resembles a previously used or registered mark that it is likely to cause consumer confusion, mistake or deception about the source of the goods or services. 15 U.S.C. § 1052(d). Under Sec. 2(d), the likelihood of confusion analysis must be based upon all of the relevant facts in evidence. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973). Of the factors listed, courts have stated that the two most important factors to be considered are the similarities between the marks and the similarities between the goods or services. *Ava Enters, Inc. v. Audio Boss USA, Inc.* 77 U.S.P.Q.2d 1783 (T.T.A.B. 2006). Here, the marks are identical and are to be used in connection with very similar products. Applicant intended to register “MY HERO” while Opposer has been using “MYHERO” in connection with Opposer’s products. [Opposer’s SofF ¶¶ 2, 5]. Moreover, Applicant intended to use Applicant’s Mark in connection with lotions. [Opposer’s SofF ¶ 7]. Lotions are closely related to the skin creams developed and sold by Opposer under Opposer’s Mark. [Opposer’s SofF ¶ 2]. Any contemporaneous use of the identical marks in connection with the identified goods would create a strong likelihood of confusion as to the source of those goods.

The marks are identical phonetically and nearly identical visually. The space between the words in Applicant’s Mark (“MY HERO”) does not create a distinct commercial impression from Opposer’s Mark (“MYHERO”), which is one word. [Opposer’s SofF ¶¶ 2,5]. *See Stock Pot, Inc. v. Stockpot Restaurant, Inc.*, 220 U.S.P.Q. 52, 54 (T.T.A.B. 1983), *aff’d*, 737 F.2d 1576, (Fed. Cir. 1984) (“There is no question that the marks of the parties ‘STOCKPOT’ and ‘STOCK POT’ are confusingly similar. The word marks are phonetically identical and visually almost identical.”) Courts have found marks to be confusing where they share similar appearance, sound, and meaning. *See Canadian Imperial Bank of Commerce v.*

Wells Fargo Bank, Nat'l Assn, 811 F.2d 1490 (Fed. Cir. 1987). (The marks “COMMCASH” and “COMMUNICASH” are similar in appearance, sound and meaning and confusion is likely when used in connection with related products.) Here, the marks are identical phonetically, are nearly visually identical, and share the same meaning as it relates to the respective products offered by the parties.

Not only are the marks identical, but they are used in connection with closely related products. The law has long protected the legitimate interests of trademark owners and consumers from confusion among noncompetitive, but related, products bearing confusingly similar marks. *Safety-Kleen Corp. v. Dresser Industries, Inc.*, 518 F.2d 1399, 1403 (C.C.P.A. 1975). Here, the Applicant claims that Applicant’s Mark will be used in connection with lotions while the Opposer’s Mark is used in connection with skin cream. [Opposer’s SofF ¶¶ 2-3, 7]. Even if the goods listed are not directly competitive, it is clear that they are related. It is sufficient that the respective goods of the parties are related in some manner, and that the conditions and activities surrounding the marketing of the goods are such that they could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same source. *Giersch v. Scripps Networks, Inc.*, 90 U.S.P.Q.2d 1020 (T.T.A.B. 2009). It is likely that the products will be encountered by consumers in a fashion that leads to source confusion as lotions and skin care products are often shelved together in retail stores, organized together on web pages, and packaged in similar containers.

While the identical appearance of the marks and the relatedness of the products are likely dispositive of the issue, consideration of the channels of trade suggest that contemporaneous use of the marks will lead to consumer confusion. If the parties do not

identify specific restrictions on the trade channels through which their goods are offered, the T.T.A.B. presumes that the goods flow through the normal and usual channels for those goods to the usual purchasers of the goods. *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581 (Fed. Cir. 1983). Here, no such restrictions are set forth by the Applicant. Opposer identifies health spas, beauty spas, online retailers, department stores, and Opposer's website as current or future channels of trade for Opposer's products. [Opposer's SofF ¶ 4]. The channels of trade used by Applicant and Opposer will inevitably appeal to an overlapping segment of consumers in the market for lotions and other skin care products. [Opposer's SofF ¶¶ 2,7]. Even highly sophisticated consumers are not necessarily knowledgeable in the field of trademarks or immune from source confusion. *See In re Decombe*, 9 U.S.P.Q.2d 1812, 1814-1815 (T.T.A.B. 1988). Having established that the marks are identical, applied to closely related products, and share the normal channels of trade, consumer confusion is highly likely.

III. CONCLUSION.

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion for summary judgment. Applicant cannot genuinely dispute Opposer's showing on the facts that Opposer has standing, Opposer's mark has priority, and that there is a strong likelihood of confusion between that mark and Applicant's. Therefore Opposer is entitled to summary judgment.

Respectfully submitted,

Attorneys for MyBody, LLC

By: 

Michael D. Hool
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

Dated: February 20, 2014.

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

In the matter of Application Serial No.: 85/597,114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.

Opposer,

vs.

ERIC LUCAS

Applicant.

Opposition No.: 91206915

**OPPOSER'S STATEMENT OF
MATERIAL FACTS AND
EXHIBITS SUPPORTING
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Opposer, My Body, LLC, by its undersigned counsel, respectfully submits the following statement of material facts as to which there is no genuine issue to be tried:

1. My Body, LLC, an Arizona limited liability company with a business address at 5080 North 40th Street, Suite 375, Phoenix, Arizona 85018 ("Opposer"), operates a business that develops and markets skin care and related products. [Opposer's Aff. ¶ 1 (Exh. A).]

2. As of January 28, 2011, Opposer adopted and has continually and extensively used the mark "MYHERO" in connection with the sale of its skin cream products since that date. [Opposer's Aff. ¶ 3 (Exh. A).]

3. Opposer has expended considerable time and resources to advertise and promote the skin cream products offered under its MYHERO mark. [Opposer's Aff. ¶ 4 (Exh. A).]

4. Opposer has identified the channels of trade where Opposer's goods have been sold, are sold, and intend to be sold as: medical offices, health spas, beauty spas, department stores,

specialty stores, online retailers, consumer sales, and via its website. [Opposer's Response to Applicant's First Set of Interrogatories ¶ 4 (Exh. B).]

5. Eric Lucas ("Applicant"), filed to register the mark "MY HERO" on April, 13, 2012 (the "Opposed Application"), based upon a *bona fide* intent to use the mark in commerce. [Applicant's Trademark Application (Exh. C).]

6. Applicant had not used the mark in interstate or intrastate commerce prior to filing the Opposed Application. [Applicant's Responses to Opposer's Request for Admissions ¶¶ 1-2 (Exh. D).]

7. Applicant intended to use the mark in connection with the sale of lotions. [Applicant's Answers to Opposer's Interrogatories. ¶ 5 (Exh. E).]

8. Applicant claims that channels of trade for Applicant's products have yet to be identified. [Applicant's Answers to Opposer's Interrogatories. ¶ 12 (Exh. E).]

9. Applicant admits that the exact date of first use of Applicant's Mark in interstate and intrastate commerce, as defined by TMEP §901.01, is March 15, 2013. [Applicant's Answers to Opposer's Interrogatories (Set 2). ¶ 27-28 (Exh. F).]

Respectfully submitted,

Attorneys for MyBody, LLC

By: 

Michael D. Hool
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

Dated: February 20, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2014, a true and correct copy of Opposer's Motion for Summary Judgment was deposited with the United States Postal Service, as first class mail, postage prepaid to:

Damon L. Ward
Ward Law Group
301 Fourth Avenue S
378 Grain Exchange Bldg
Minneapolis, MN 55415-1015

By:  _____
Heidi Abdul
Paralegal

EXHIBIT A

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

In the matter of Application Serial No.: 85/597,114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.,

Opposer,

vs.

Eric Lucas,

Applicant.

Opposition No. 91206915

AFFIDAVIT OF DAVID WATSON

I, David Watson, hereby declare as follows:

I am over the age of 18, competent to make this declaration, and I am familiar with the facts below. I offer this declaration in support of Opposer's Motion for Summary Judgment.

1. I am a founder of mybody, L.L.C. of 5080 N. 40th St. Ste.375, Phoenix, AZ 85018 ("Opposer"). Accordingly, I am familiar with the marketing, advertising, and product development of Opposer's products.

2. Opposer is the owner of U. S Application No. 85695722, for "skin creams" (herein referred to as the "MYHERO Mark"). Attached hereto as Attachment A is Opposer's application.

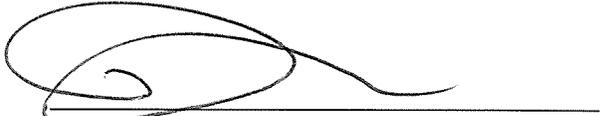
3. Opposer has continuously and extensively used its MYHERO Mark throughout the United States since at least as early as January 28, 2011, and during that time has sold its jars of skin cream bearing Opposer's MYHERO Mark through its website and through its resellers since that date.

4. Opposer has expended considerable time and resources to advertise and promote the skin cream products offered under its MYHERO Mark since first using the MYHERO Mark on January 28, 2011.

* * *

The matters stated in this declaration are true and accurate to the best of my personal knowledge. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: February 19, 2014.



David Watson

ATTACHMENT A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85695722

Filing Date: 08/06/2012

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	MYHERO
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MYHERO
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	MYBODY, L.L.C.
*STREET	5080 N. 40th Street, Suite 375
*CITY	Phoenix
*STATE (Required for U.S. applicants)	Arizona
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	85018

PHONE	602-852-5500
FAX	602-852-5499
EMAIL ADDRESS	uspto@hoollawgroup.com
LEGAL ENTITY INFORMATION	
*TYPE	LIMITED LIABILITY COMPANY
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Arizona
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	003
*IDENTIFICATION	Skin creams
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/28/2011
FIRST USE IN COMMERCE DATE	At least as early as 01/28/2011
SPECIMEN FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT16\IMAGEOUT 16\856\957\85695722\xml1\FTK0004.JPG
ORIGINAL PDF FILE	SPE0-1-67136108142-133653346_.myHERO_Packaging.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\856\957\85695722\xml1\FTK0003.JPG
SPECIMEN DESCRIPTION	photograph of packaging and product
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM	

(if applicable)

ATTORNEY INFORMATION

NAME	Michael D. Hool
FIRM NAME	Hool Law Group, PLC
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COUNTRY	United States
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FAX	602-852-5499
EMAIL ADDRESS	uspto@hoollawgroup.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Jennifer L. Lefere

CORRESPONDENCE INFORMATION

*NAME	Michael D. Hool
FIRM NAME	Hool Law Group, PLC
*STREET	2398 E. Camelback Road, Suite 1020
*CITY	Phoenix
*STATE (Required for U.S. applicants)	Arizona
*COUNTRY	United States
*ZIP/POSTAL CODE	85016
PHONE	602-852-5500
FAX	602-852-5499
*EMAIL ADDRESS	uspto@hoollawgroup.com
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION

NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Therese Clark/
* SIGNATORY'S NAME	Therese Clark
* SIGNATORY'S POSITION	Co-Founder
SIGNATORY'S PHONE NUMBER	6023934668
* DATE SIGNED	08/03/2012

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85695722

Filing Date: 08/06/2012

To the Commissioner for Trademarks:

MARK: MYHERO (Standard Characters, see [mark](#))

The literal element of the mark consists of MYHERO.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, MYBODY, L.L.C., a limited liability company legally organized under the laws of Arizona, having an address of

5080 N. 40th Street, Suite 375
Phoenix, Arizona 85018
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 003: Skin creams

In International Class 003, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 01/28/2011, and first used in commerce at least as early as 01/28/2011, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) photograph of packaging and product.

JPG file(s):

[Specimen File 1](#)

Original PDF file:

[SPE0-1-67136108142-133653346 . myHERO Packaging.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File 1](#)

The applicant's current Attorney Information:

Michael D. Hool and Jennifer L. Lefere of Hool Law Group, PLC

2398 E. Camelback Road, Suite 1020
Phoenix, Arizona 85016
United States

The applicant's current Correspondence Information:

Michael D. Hool
Hool Law Group, PLC
2398 E. Camelback Road, Suite 1020
Phoenix, Arizona 85016
602-852-5500(phone)
602-852-5499(fax)
uspto@hoolawgroup.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Therese Clark/ Date Signed: 08/03/2012
Signatory's Name: Therese Clark
Signatory's Position: Co-Founder

RAM Sale Number: 8575
RAM Accounting Date: 08/06/2012

Serial Number: 85695722
Internet Transmission Date: Mon Aug 06 10:25:23 EDT 2012
TEAS Stamp: USPTO/FTK-67.136.108.142-201208061025239
27693-85695722-4909485caec1bc013fd31a5ab
ddf56bf-CC-8575-20120803133653346863

MYHERO



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A heroic, high-performance anti-aging serum works above and beyond the skin's surface to help repair damaged skin while restoring the skin's youthful luminosity and resilience.

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- **mySB-189™** – a proprietary (Smart Biomimetic Lipid-Oligopeptide) is shown to boost a series of retinoic acid receptors to enhance the delivery and benefits of retinol.
- **Renovage™** – clinically proven anti-aging complex extends the lifespan of skin cells and provides significant visible and structural improvements to aging skin, including firmness and tone, brown spots and fine lines and wrinkles.
- **Skin Tightener ST™** – a natural marine complex proven to create an instantaneous tightening and wrinkle reducing effect in around five minutes after application.



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myHERO™

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AGING

1 FL OZ US / 30 mL



 mybody™

myHERO™

Anti-Aging Growth
Factor Serum

mytreatment
STEP 2 • PM

AGING

1 FL OZ US / 30 mL

EXHIBIT B

TRADE SECRET/COMMERCIALY SENSITIVE

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

In the matter of Application Serial No.: 85/597114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.

Opposer,

vs.

ERIC LUCAS

Defendant.

Opposition No.: 91206915

**OPPOSER'S RESPONSE TO
APPLICANT'S FIRST SET OF
INTERROGATORIES**

Pursuant to Trademark Rules 2.116 and Rule 33 of the Federal Rules of Civil Procedure, MYBODY, L.L.C. ("Opposer") hereby responds to Eric Lucas ("Applicant") First Set of Interrogatories dated January 20, 2013.

PRELIMINARY STATEMENT

Opposer's investigation and development of all facts and circumstances relating to this proceeding is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Opposer's right to rely on other facts or documents in this Opposition. Opposer does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of all responses into evidence in this Opposition, on any and all grounds. Opposer expressly reserves the right to supplement, clarify, revise or correct any or all of the responses herein, without obligating itself to do so, and all objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

GENERAL OBJECTIONS

1. Opposer objects to the interrogatories, and the “Definitions” thereto, to the extent that they require more than prescribed by the Federal Rules of Civil Procedure, the Trademark Rules, or applicable case law, and impose or purport to impose any duty on Opposer beyond that prescribed by the Federal Rules of Civil Procedure, the pertinent Trademark Rules or applicable case law.

2. Opposer further objects to the definition of “Opposer’s Goods” to the extent that it purports to include “Non-medicated anti-aging serum” that is sold under marks other than Opposer’s MYHERO mark. The present Opposition relates to a specific published trademark application and mark set forth in the Opposition, and does not provide Applicant with a right to discovery of information not related to that trademark application or the mark thereunder.

3. Opposer further objects to the interrogatories to the extent they seek discovery of information or documents not in the possession, custody or control of the Opposer.

4. Opposer further objects to the interrogatories to the extent any interrogatory requires or purports to require Opposer to provide information or documents reflecting confidential communications with its counsel protected by attorney-client privilege and/or information or documents protected by the work product doctrine, or otherwise privileged or immune from discovery. Each such interrogatory is objected to as overbroad, unduly burdensome, oppressive and seeking disclosure of privileged information that is beyond the scope of discovery under the Federal Rules of Civil Procedure.

5. Opposer further objects to the interrogatories to the extent any interrogatory seeks information is that clearly irrelevant to the Opposition, including, but not limited to, any request for social security numbers and personal information of the parties.

TRADE SECRET/COMMERCIALY SENSITIVE

6. Opposer further objects to the interrogatories to the extent any interrogatory requires or purports to require Opposer to provide information or documents containing trade secret, commercially sensitive, confidential or proprietary information.

7. Opposer further objects to the interrogatories to the extent they seek discovery of information that is in the possession, custody or control of a third party, as such production would be unnecessarily and unduly burdensome and expensive.

8. Opposer's responses to the interrogatories represent Opposer's reasonable effort to provide the information requested based upon information in Opposer's possession, custody or control, and based upon its current knowledge.

9. Opposer reserves the right to produce information regarding subsequently discovered facts, to alter or amend its responses as set forth herein, and otherwise to assert factual and legal contentions as additional facts are ascertained, analyses are made and legal research completed.

10. Opposer will make a reasonable effort to respond to each interrogatory, to the extent that no objection is made, as Opposer understands or interprets the interrogatory. If Opposer or other parties hereto subsequently assert any other interpretation thereof, Opposer reserves the right to supplement these objections and responses. Any statement of intent to respond to interrogatories is subject to the limitations, objections and exceptions set forth herein.

11. Subject to the foregoing objections and limitations, which are incorporated by reference into each of the following responses, Opposer responds to Applicant's interrogatories as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For each specific interrogatory, identify the person(s) verifying your answers to the following interrogatories on your behalf and all persons providing information for each specific interrogatory from which the answers were compiled.

RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory as compound. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 1 as follows:

Therese Clark, Co Founder / Vice President Creative Development, whose information was provided in Opposer's Initial Disclosures;

David Watson, Chairman, whose information was provided in Opposer's Initial Disclosures;

Christine Watson, Chief Executive Officer, 5080 North 40th Street, Suite 375, Phoenix, Arizona 85018, 602.393.4668;

Kevin Costigan, Chief Financial Officer, 5080 North 40th Street, Suite 375, Phoenix, Arizona 85018, 602.393.4668; and

Opposer's counsel, Jennifer L. Lefere, Hool Law Group, PLC, 2398 E. Camelback Rd, Suite 1020, Phoenix, AZ 85016.

INTERROGATORY NO. 2

TRADE SECRET/COMMERCIALY SENSITIVE

Please state the name, address, telephone number, occupation and place of employment of each and every person who are known or believed by you or your attorneys to have any information concerning the allegations in the pleadings in this opposition whether or not employed by, associated with or affiliated with you, who possesses any information which is relevant to any allegation in Opposer's Notice of Opposition or relevant to any issue in this action, providing a brief summary of the substance of each person's knowledge concerning the same, and designating those person(s) you intend to call as witnesses or whose testimony you intend to use at mediation, arbitration, Accelerated Case Resolution, or trial of this matter on the merits.

RESPONSE TO INTERROGATORY NO. 2:

Opposer objects to this interrogatory as compound. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 2 as follows:

Therese Clark – knowledge of adoption and use of Opposer's Mark

David Watson – knowledge of adoption and use of Opposer's Mark

INTERROGATORY NO. 3

Identify the persons who participated in or who were consulted about the creation and adoption of Opposer's Mark by Opposer, including the person(s) who first conceived of Opposer's Mark, the person(s) who approved Opposer's Mark for adoption and use, and the person(s) responsible for designing any and all other materials bearing Opposer's Mark, and describe the responsibility, role, activity, and contribution made by each such person.

RESPONSE TO INTERROGATORY NO. 3:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory as compound, overbroad, vague and unduly burdensome. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 3 as follows: Therese Clark and David Watson created, adopted and approved the Opposer's Mark.

INTERROGATORY NO. 4

With respect to Opposer's sales of Opposer's Goods:

- (a) list by month the total amount of such sales in dollars and in number of customers (identifying specifically the type of Opposer's Goods sold);
- (b) identify separately the channels of trade and distribution in which Opposer's Goods (i) have been sold, (ii) are sold, and (iii) are intended to be sold in the future (identifying specifically the type of Goods);
- (c) identify the business entities used by Opposer to sell Opposer's Goods; and
- (d) identify the three individuals most knowledgeable about the distribution and sale of Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 4:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory as compound, overbroad, vague and

TRADE SECRET/COMMERCIALY SENSITIVE

unduly burdensome and not sufficiently limited as to time, scope or geographic location. Opposer objects to the use of the phrase “types of Opposer’s Goods” as unclear and inconsistent with the defined term. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 4 as follows:

(a) Opposer has provided such information in response to Applicant’s Request for Production of Document to Opposer (Set 1) from Opposer, Request No. 1. .

(b) (i) (ii) and (iii) Channels of trade Opposer’s Goods have been sold, are sold, and intend to be sold are: medical offices, health spas, beauty spas, Internet, department stores, specialty stores, online retailers, consumer sales, and via its website.

(c) Pursuant to F.R.C.P. 33(d), Opposer states the answers to this Interrogatory may be derived or ascertained from Applicant’s Request for Production of Document to Opposer (Set 1) from Opposer, Request No. 20; and Mybody, L.L.C., an Arizona limited liability company.

(d) Therese Clark, David Watson, Christine Watson.

INTERROGATORY NO. 5

For Opposer’s Goods, identify:

- (a) potential customers for Opposer’s Goods;
- (b) the manner of advertising, solicitation and/or targeting of customers and/or potential customers (e.g., advertisement, sales visits, brochures, mailings, trade shows, etc.);
- (c) all issues of publications, directories and broadcasting outlets that have carried advertisements for Opposer’s Goods;
- (d) each advertising agency, consulting firm or other third party who advised, aided,

assisted or otherwise participated in each advertisement, solicitation and/or targeting of customers and/or potential customers;

(e) the approximate annual expenditure of Opposer and any other entity from whom Opposer claims rights, for all advertising for Opposer's Goods;

(f) the recommended retail price of each of Opposer's Goods; and

(g) the three individuals most knowledgeable about the preparation of advertising and promotional copy for Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 5:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to use of the term "advertising" as overly broad and unduly burdensome. Opposer objects to this request as compound, overbroad, vague, unduly burdensome, and not sufficiently limited as to time, scope or geographic location. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 5 as follows:

(a) See response to Interrogatory No. 4 and all persons seeking health and beauty care and treatments.

■ [REDACTED]

[REDACTED]

■ [REDACTED]

INTERROGATORY NO. 6

State in detail, not in summary fashion, each and all facts which support and/or provide a basis Opposer's Claims.

RESPONSE TO INTERROGATORY NO. 6:

Opposer objects to this interrogatory as compound, overbroad, vague and unduly burdensome. Opposer objects to this interrogatory to the extent it seeks information related to Opposer's legal reasoning and strategy and not otherwise required to be disclosed. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 6 as follows: see response to Interrogatory No. 7, and, pursuant to F.R.C.P. 33(d), Opposer states the answers to this Interrogatory may be derived or ascertained from Opposer's document production in response to Applicant's Request for Production of Document to Opposer (Set 1) and Opposer's responses to these Interrogatories.

INTERROGATORY NO. 7

TRADE SECRET/COMMERCIALY SENSITIVE

Identify the date Opposer's Mark was first used in commerce.

RESPONSE TO INTERROGATORY NO. 7:

Opposer objects to the term "first used in commerce" as vague and not sufficiently defined. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 7 as follows: January 28, 2011.

INTERROGATORY NO. 8

Identify each store, outlet, and website from which Opposer's Goods are or have been sold.

RESPONSE TO INTERROGATORY NO. 8:

Opposer objects to this interrogatory as compound, overbroad, vague and unduly burdensome and not sufficiently limited as to time, scope or geographic location. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 8 as follows: see response to Interrogatory No. 4, and, pursuant to F.R.C.P. 33(d), Opposer states the answers to this Interrogatory may be derived or ascertained from Opposer's document production in response to Applicant's Request for Production of Document to Opposer (Set 1) and Opposer's responses to these Interrogatories.

INTERROGATORY NO. 9

Identify all documents relating to any communication or inquiry received by Opposer, or anyone acting on Opposer's behalf, relating, directly or indirectly, to Applicant or to Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 9:

TRADE SECRET/COMMERCIALY SENSITIVE

Opposer objects to this interrogatory as compound, overbroad, vague and unduly burdensome and not sufficiently limited as to time, scope or geographic location. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds as follows: None.

INTERROGATORY NO. 10

If Opposer has ever permitted use of Opposer's Mark by a person other than Opposer, describe all facts and circumstances surrounding such use(s).

RESPONSE TO INTERROGATORY NO. 10:

Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Opposer objects to this interrogatory to the extent it is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and General Objections, Opposer responds as follows: Opposer has not permitted use of Opposer's Mark by a person other than in connection with the authorized sale, offering for sale, promotion and marketing of Opposer's Goods.

INTERROGATORY NO. 11

If Applicant has entered into any license or assignment agreements involving Opposer's Mark, describe all facts and circumstances surrounding such license agreement(s).

RESPONSE TO INTERROGATORY NO. 11:

Opposer objects to this interrogatory as compound, overbroad, vague and unduly

burdensome and not sufficiently limited as to time, scope or geographic location. Opposer objects to this interrogatory to the extent it is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to Interrogatory No. 11 as follows: Opposer has not entered into any assignments of Opposer's Mark. Opposer has entered into agreements with its distributors, dealers and retailers that describe these parties' obligations regarding distribution, sale, marketing of goods sold under Opposer's Mark.

INTERROGATORY NO. 12

Identify any search, investigation, evaluation, comparison, and/or report relating to Applicant's Mark, Applicant's Goods, Opposer's Mark, or Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 12:

Opposer objects to the terms "search, investigation, evaluation, comparison, and/or report" as vague and ambiguous. Opposer objects to this request as overbroad, vague, unduly burdensome, and not sufficiently limited as to time or scope. Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 12 as follows: Opposer conducted a knock-out search for Opposer's Mark on or about June 30, 2010.

INTERROGATORY NO. 13

TRADE SECRET/COMMERCIALY SENSITIVE

Identify any survey, pretest, poll, investigation, or other evaluation relating to any consumer recognition or confusion (or lack thereof) in connection with Applicant's Mark, Applicant's Goods, Opposer's Mark, or Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 13:

Opposer objects to the terms "survey, pretest, poll, investigation, or other evaluation" as vague and ambiguous. Opposer objects to this request as overbroad, vague, unduly burdensome, and not sufficiently limited as to time or scope. Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 13 as follows: Opposer is not aware of any such items.

INTERROGATORY NO. 14

Identify any known instance of confusion, mistake, or deception relating to Applicant's Mark, the source or origin of Applicant's Goods, Opposer's Mark, or the source or origin of Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 14:

Opposer objects to this request as overbroad, vague, unduly burdensome, and not sufficiently limited as to time or scope. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 14 as follows: Opposer is not aware of any such instances.

INTERROGATORY NO. 15

With respect to Opposer's knowledge of Applicant and Applicant's Mark:

- (a) identify the date when Opposer first learned of the existence of Applicant's Mark,

the circumstances surrounding Opposer's acquisition of such knowledge, and the source(s) of such knowledge; and

(b) describe the knowledge Opposer learned and now has concerning Applicant's Mark and Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 15:

Opposer objects to this request as compound, overbroad, ambiguous, vague, unduly burdensome, and not sufficiently limited as to time or scope. Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 15 as follows: (a) Opposer learned of Applicant's Mark on or about June 21, 2012 when Opposer's Counsel discovered the Application in a routine status check of the U.S. Patent and Trademark Office database.;(b) Opposer has such knowledge as provided in the Application and as provided by Applicant and Applicant's counsel in the course of this Opposition.

INTERROGATORY NO. 16

For each person whose testimony Opposer expects or anticipates to introduce, whether by way of affidavit, deposition, or otherwise in this matter:

- (a) name the person;
- (b) state the subject matter on which he or she is expected to testify;
- (c) provide a summary of the expected testimony; and
- (d) state whether that witness or affiant will be offering evidence in the capacity of an expert.

RESPONSE TO INTERROGATORY NO. 16:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory as compound. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 16 as follows: See response to Interrogatory No. 2. Such persons will be not offering evidence in the capacity of an expert.

INTERROGATORY NO. 17

Identify all persons who have material knowledge or claim to have material knowledge concerning the use of Applicant's Mark or Opposer's Mark, and identify any documents relating thereto.

RESPONSE TO INTERROGATORY NO. 17:

Opposer objects to this interrogatory to the extent it seeks information that is not relevant to the claim or defense of any party, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this interrogatory as compound. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 17 as follows: See response to Interrogatory No. 2 for knowledge concerning Opposer's Mark and see Opposer's responses to Applicant's Request for Production of Documents to Opposer (Set 1).

INTERROGATORY NO. 18

Describe the basis for Opposer's belief that Opposer is the owner of Opposer's Mark and that no other party has the right to use Opposer's Mark in commerce or a mark that it likely to cause confusion or mistake with Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 18:

Opposer objects to this interrogatory as compound. Opposer objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Opposer objects to this interrogatory to the extent it seeks the legal reasoning and theories of Opposer's grounds for Opposition. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 18 as follows: see Opposer's response to Interrogatory No. 7, and pursuant to F.R.C.P. 33(d), Opposer states the answers to this Interrogatory may be derived or ascertained from Opposer's document production in response to Applicant's Request for Production of Document to Opposer (Set 1) and Opposer's responses to these Interrogatories.

INTERROGATORY NO. 19

Identify all actions taken by Opposer to commence use of Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 19:

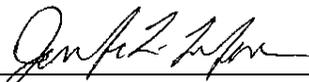
Opposer objects to this request as compound, overbroad, vague, unduly burdensome, and not sufficiently limited as to time, scope or geographic location. Opposer objects to this Interrogatory to the extent this request has, in substance, been previously and/or concurrently propounded. Subject to and without waiving the foregoing objections and General Objections, Opposer responds to this Interrogatory No. 19 as follows: See response to Interrogatory No. 4,

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No. 7 and No. 8.

Respectfully submitted,
Attorneys for MyBody, L.L.C.

Dated: February 20, 2013

By: 

Jennifer L. Lefere
HOOL LAW GROUP, PLC
Suite 1020
2398 East Camelback Road
Phoenix, Arizona 85016
(602) 852-5580

TRADE SECRET/COMMERCIALLY SENSITIVE

VERIFICATION

I, Therese Clark, Co-Founder and Vice President of Creative Development of MyBody L.L.C., have read the document OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES dated February 20, 2013, and believe the contents to be true and correct. I declare under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Dated: February 20, 2013



Therese Clark

TRADE SECRET/COMMERCIALY SENSITIVE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2013, a true and correct copy of Opposer's Response To Applicant's First Set Of Interrogatories was served on Applicant by depositing the same with the United States Postal Service, as first class mail, postage prepaid to:

Damon L. Ward
Ward Law Group
301 Fourth Avenue S
378 Grain Exchange Bldg
Minneapolis, MN 55415-1015

By: 

Heidi L. Abdul
Paralegal

EXHIBIT C

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85597114

Filing Date: 04/13/2012

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	MY HERO
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MY HERO
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Lucas, Eric
*STREET	2509 Mayflower Avenue
*CITY	Minnetonka
*STATE (Required for U.S. applicants)	Minnesota
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	55305
PHONE	9525822928
EMAIL ADDRESS	eric@theoxygenplan.com

WEBSITE ADDRESS	www.theoxygenplan.com
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	003
*IDENTIFICATION	Cosmetic preparations
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Damon L. Ward
FIRM NAME	Ward Law Group
INTERNAL ADDRESS	378N
STREET	301 Fourth Avenue South
CITY	Minneapolis
STATE	Minnesota
COUNTRY	United States
ZIP/POSTAL CODE	55415
PHONE	6123539770
FAX	18667596030
EMAIL ADDRESS	dward@wardlawgroup.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	

*NAME	Damon L. Ward
FIRM NAME	Ward Law Group
INTERNAL ADDRESS	378N
*STREET	301 Fourth Avenue South
*CITY	Minneapolis
*STATE (Required for U.S. applicants)	Minnesota
*COUNTRY	United States
*ZIP/POSTAL CODE	55415
PHONE	6123539770
FAX	18667596030
*EMAIL ADDRESS	dward@wardlawgroup.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Damon L. Ward/
* SIGNATORY'S NAME	Damon L. Ward
* SIGNATORY'S POSITION	Attorney of Record, MN bar member
SIGNATORY'S PHONE NUMBER	6122823060
* DATE SIGNED	04/13/2012

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85597114

Filing Date: 04/13/2012

To the Commissioner for Trademarks:

MARK: MY HERO (Standard Characters, see [mark](#))

The literal element of the mark consists of MY HERO.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Eric Lucas, a citizen of United States, having an address of
2509 Mayflower Avenue
Minnetonka, Minnesota 55305
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 003: Cosmetic preparations

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

For informational purposes only, applicant's website address is: www.theoxygenplan.com

The applicant's current Attorney Information:

Damon L. Ward of Ward Law Group
378N
301 Fourth Avenue South
Minneapolis, Minnesota 55415
United States

The applicant's current Correspondence Information:

Damon L. Ward
Ward Law Group
378N
301 Fourth Avenue South
Minneapolis, Minnesota 55415

6123539770(phone)
18667596030(fax)
dward@wardlawgroup.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Damon L. Ward/ Date Signed: 04/13/2012
Signatory's Name: Damon L. Ward
Signatory's Position: Attorney of Record, MN bar member

RAM Sale Number: 9395
RAM Accounting Date: 04/13/2012

Serial Number: 85597114
Internet Transmission Date: Fri Apr 13 12:16:06 EDT 2012
TEAS Stamp: USPTO/FTK-173.165.238.222-20120413121606
237898-85597114-49064d8c4405ef7804e5b963
f21f663e82-CC-9395-20120413120838096780

MY HERO

EXHIBIT D

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

Opposition No. 91206915

ERIC LUCAS,

Applicant.

APPLICANT'S RESPONSES TO OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS

TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE,
HOOE LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD,
PHOENIX, ARIZONA 85016.

Pursuant to 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and
Rule 34 of the Federal Rules of Civil Procedure, Applicant hereby furnishes objections and

responses the following Requests for Production of Documents.

Applicant states that he has not completed his investigation or discovery relating to this
case, and has not completed his preparation for trial. The following responses are based on an
incomplete investigation, and therefore, are necessarily limited by the records and information in
existence, currently unknown, presently recollecting and thus far discovered in the course of
preparing these responses. Therefore, these responses are given without prejudice to Applicant's
right to produce at trial subsequently discovered facts or information. Applicant specifically

as overbroad and irrelevant, and not calculated to lead to discovery of admissible evidence.

6. Applicant objects to the unlimited time period of some of these discovery requests mutually agreeable time and location.

5. In those instances where Applicant's response indicates that responsive documents will be produced (pursuant to Federal Rule of Civil Procedure 34), copies will be made available for inspection by counsel for Applicant, to the extent such documents exist, at a may be interposed at trial.

4. Applicant's responses are provided subject to all objections to admissibility that of admissible evidence.

3. Applicant objects to the discovery requests to the extent that they impose any undue burden or expense on Applicant, or are not reasonably calculated to lead to the discovery objections will be withheld.

2. Applicant objects to the discovery requests to the extent that they seek information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure.

1. Applicant objects to the discovery requests to the extent that they attempt to impose duties different from or inconsistent with the requirements of 37 C.F.R. Part 2, §

GENERAL OBJECTIONS

for Production of Documents responds as follows:

Accordingly, Applicant, for his answers, objections and responses to Opposer's Request

be made available.

reserves the right to supplement his responses as discovery is ongoing and other information may

responsive to this request to the extent they exist and in Applicant's possession or control will be

Response: Applicant states that all relevant, non-privileged documents

4. All documents demonstrating any use of Applicant's Mark.

mutually agreeable place and time.

made available for inspection and copying subject to the Protective Order in this action at a

responsive to this request to the extent they exist and in Applicant's possession or control will be

Response: Applicant states that all relevant, non-privileged documents

All documents that relate to Applicant's selection of Applicant's Mark for registration and use as a trademark.

3. All documents that relate to Applicant's selection of Applicant's Mark for

mutually agreeable place and time.

made available for inspection and copying subject to the Protective Order in this action at a

responsive to this request to the extent they exist and in Applicant's possession or control will be

Response: Applicant states that all relevant, non-privileged documents

Opposer's First Set of Interrogatories served simultaneously herewith.

2. All documents used or referred to by you in preparing your responses to

mutually agreeable place and time.

made available for inspection and copying subject to the Protective Order in this action at a

responsive to this request to the extent they exist and in Applicant's possession or control will be

Response: Applicant states that all relevant, non-privileged documents

Interrogatories served simultaneously herewith.

1. All documents identified by you in response to Opposer's First Set of

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

vague.

7. Applicant objects to Opposer's definitions and instructions as overbroad and

7. All documents that describe or discuss the nature, function or features of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark including instructions and ingredients.

the Protective Order in this action at a mutually agreeable place and time. Applicant's possession or control will be made available for inspection and copying subject to relevant, non-privileged documents responsive to this request to the extent they exist and in and expressly reserving the right to supplement Applicant's response, Applicant states that all will be withheld. Without waiving this and Applicant's general objections and subject thereto, privilege(s), or other privileges or immunity defenses. Information subject to such objections that is privileged from discovery by the virtue of attorney-client, attorney work product Applicant objects to the discovery request to the extent that it seeks information

Response:

6. All documents relating to any searches undertaken by Applicant in connection with Applicant's Mark

the Protective Order in this action at a mutually agreeable place and time. in Applicant's possession or control will be made available for inspection and copying subject to that all relevant, non-privileged documents responsive to this request to the extent they exist and thereto, and expressly reserving the right to supplement Applicant's response, Applicant states objections will be withheld. Without waiving this and Applicant's general objections and subject product privilege(s), or other privileges or immunity defenses. Information subject to such information that is privileged from discovery by the virtue of attorney-client, attorney work Applicant objects to the discovery request to the extent that it seeks

Response:

5. All searches related to the selection of Applicant's Mark.

mutually agreeable place and time. made available for inspection and copying subject to the Protective Order in this action at a

9. All documents that relate to the channels of trade Applicant has used, or intends to use, for any goods or services offered or to be offered under Applicant's Mark.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

8. All documents that relate to all use and planned or intended uses of Applicant's Mark in connection with the advertisement, promotion or marketing of products or services including sales brochures, promotional materials, business plans, displays and advertisements.

Applicant objects to the discovery requests to the extent that they seek information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

11. All documents that identify or are related to the actual purchasers of goods and services offered or intended to be offered under Applicant's Mark including customer lists, market identifications, market analyses, market surveys or market studies.

the Protective Order in this action at a mutually agreeable place and time. Applicant's possession or control will be made available for inspection and copying subject to relevant, non-privileged documents responsive to this request to the extent they exist and in and expressly reserving the right to supplement Applicant's response, Applicant's states that all will be withheld. Without waiving this and Applicant's general objections and subject thereto, privilege(s), or other privileges or immunity defenses. Information subject to such objections that is privileged from discovery by the virtue of attorney-client, attorney work product Applicant objects to the discovery requests to the extent that it seeks information

Response:

10. All documents that identify or relate to any market or markets to which Applicant intends to or does promote, offer or sell goods and services under Applicant's Mark including customer lists, market identifications, market analyses or market studies.

the Protective Order in this action at a mutually agreeable place and time. in Applicant's possession or control will be made available for inspection and copying subject to that all relevant, non-privileged documents responsive to this request to the extent they exist and thereto, and expressly reserving the right to supplement Applicant's response, Applicant's states objections will be withheld. Without waiving this and Applicant's general objections and subject product privilege(s), or other privileges or immunity defenses. Information subject to such information that is privileged from discovery by the virtue of attorney-client, attorney work

Response:

Applicant objects to the discovery requests to the extent that it seeks

13. All documents that relate to any challenges to Applicant's right to own or use Applicant's Mark.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

12. All documents that identify or are related to the end-users of goods and services offered or intended to be offered under Applicant's Mark including customer lists, market identifications, market analyses or market studies.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

15. All documents from trade shows or other industry events that Applicant attended and at which Applicant used Applicant's Mark.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, Applicant expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

14. All documents that relate to Applicant's knowledge of Opposer or Opposer's Marks.

Applicant objects to Opposer's request as overbroad and vague. Applicant further objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

18. All documents that identify the features of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark.
None.

Response:

17. All documents sufficient to identify any confusion resulting from the use of Applicant's Mark.
copying subject to the Protective Order in this action at a mutually agreeable place and time.

All relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

16. All documents that reference the price or anticipated price of the goods identified in the Application.
copying subject to the Protective Order in this action at a mutually agreeable place and time.

All relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

21. All documents relating to the price or anticipated price of the products and services with which Applicant uses or intends to use Applicant's Mark.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

20. All documents that identify your Dealers and intended Dealers.

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Response:

19. All documents that identify the function of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark.

Response:

Applicant objects to the discovery requests to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant states that all relevant, non-privileged documents responsive to this request to the extent they exist and in Applicant's possession or control will be made available for inspection and copying subject to the Protective Order in this action at a mutually agreeable place and time.

Dated: March 18, 2013

WARD LAW GROUP



By: _____

Damon L. Ward

301 Fourth Avenue South

378 Grain Exchange Building

Minneapolis, MN 55415

Telephone: (612) 353-9770

Fax: (866) 759-6030

E-mail: dward@wardlawgroup.com

Certificate of Service and Transmittal: I hereby certify that a copy of the foregoing *RESPONSES TO OPPOSER'S REQUEST FOR PRODUCTION OF DOCUMENTS* is being sent by first class mail, postage prepaid, to: mybody, LLC through its counsel Jennifer L. Lefere, Hool Law Group, PLC, Suite 1020, 2398 East Camelback Road, Phoenix, AZ 85016.

Dated: March 19, 2012



Damon L. Ward

EXHIBIT E

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

ERIC LUCAS,

Applicant.

APPLICANT'S ANSWER'S TO OPPOSER'S INTERROGATORIES

TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE,
HOOE LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD,
PHOENIX, ARIZONA 85016.

Pursuant to 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and
Rule 33 of the Federal Rules of Civil Procedure, Applicant hereby furnishes objections and

responses the following Answers to Opposer's Interrogatories.

Applicant states that he has not completed his investigation or discovery relating to this
case, and has not completed his preparation for trial. The following responses are based on an
incomplete investigation, and therefore, are necessarily limited by the records and information in
existence, currently unknown, presently recollect and thus far discovered in the course of
preparing these responses. Therefore, these responses are given without prejudice to Applicant's
right to produce at trial subsequently discovered facts or information. Applicant specifically

as overbroad and irrelevant, and not calculated to lead to discovery of admissible evidence.

6. Applicant objects to the unlimited time period of some of these discovery requests mutually agreeable time and location.

made available for inspection by counsel for Applicant, to the extent such documents exist, at a documents will be produced (pursuant to Federal Rule of Civil Procedure 34), copies will be 5. In those instances where Applicant's response indicates that responsive may be interposed at trial.

4. Applicant's responses are provided subject to all objections to admissibility that of admissible evidence.

undue burden or expense on Applicant, or are not reasonably calculated to lead to the discovery 3. Applicant objects to the discovery requests to the extent that they impose any objections will be withheld.

product privilege(s), or other privileges or immunity defenses. Information subject to such information that is privileged from discovery by the virtue of attorney-client, attorney work 2. Applicant objects to the discovery requests to the extent that they seek 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure.

impose duties different from or inconsistent with the requirements of 37 C.F.R. Part 2, § 1. Applicant objects to the discovery requests to the extent that they attempt to

GENERAL OBJECTIONS

Interrogatories responds as follows:

Accordingly, Applicant, for his answers, objections and responses to Opposer's

be made available.

reserves the right to supplement his responses as discovery is ongoing and other information may

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Applicant has no way of knowing the universe of persons who may have knowledge of what Opposer seek. Accordingly, Applicant objects to this Interrogatory to

Answer:

INTERROGATORY NO. 3: Identify all persons with knowledge as to any promotion, offer or intent to offer any products under Applicant's Mark.

it.

Applicant states that he independently thought up Applicant's Mark and solely approved

Answer:

INTERROGATORY NO. 2: (a) Identify all persons who approved the selection of Applicant's mark. (b) Describe the specific reasons for the selection of Applicant's Mark.

Applicant objects to this interrogatory to the extent that it seeks information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld. Without waiving this and Applicant's general objections and subject thereto, and expressly reserving the right to supplement Applicant's response, Applicant's states that he personally conducted no independent search of the United States Patent and Trademark Office.

Answer:

INTERROGATORY NO. 1: Identify all searches, investigations, evaluations, comparisons and/or reports conducted by or on behalf of Applicant in connection with its decision to file a trademark application for Applicant's Mark and identify the date on which those searches were conducted.

ANSWERS TO INTERROGATORIES

vague.

7. Applicant objects to Opposer's definitions and instructions as overbroad and

the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that Applicant's initial use of Applicant's Mark is for lotion.

Answer:

INTERROGATORY NO. 5: Identify the specific product, qualities or features of the goods covered by the description "cosmetic preparations" as stated in the Application. to use the mark on all the goods listed in the Application.

The basis for Applicant's bona fide intent to use Applicant's Mark for the goods listed in the Application for the Applicant's Mark is that Applicant has a good faith and bona fide intent

Answer:

INTERROGATORY NO. 4: State the basis for Applicant's bona fide intent to use Applicant's Mark for the goods listed in the Application for the Applicant's Mark. partners pursuant to an "Attorneys Eyes Only" designation of said information.

Applicant's answer, Applicant states that it will provide the names and identities of business Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Applicant has no way of knowing the universe of persons who may have knowledge of what Opposer seek. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that it will identify any agreements (assignments, licenses,

Answer:

INTERROGATORY NO. 9: Identify any agreements (assignments, licenses, distributorships, authorizations, permissions or consents) entered into by Applicant regarding any use or prospective use of Applicant's Mark. offered for sale under Applicant's Mark: www.myherolotion.com.

Applicant directs Opposer to the following websites from which products intended to be

Answer:

INTERROGATORY NO. 8: Identify each store, outlet and website from which products offered or intended to be offered under Applicant's Mark are sold and/or offered for sale.

Applicant currently intends to promote products offered to users of skin lotion.

Answer:

INTERROGATORY NO. 7: Identify the types of customers to whom Applicant has promoted, or to whom Applicant intends to promote, each product offered or intended to be offered under Applicant's Mark.

Answer: Applicant states that a price has not yet been determined.

INTERROGATORY NO. 6: State the current or anticipated price for each product offered or intended to be offered under Applicant's Mark.

Applicant objects to this interrogatory to the extent Opposer seeks to define Opposer's Mark to include its U.S. Serial No. 85/695,722, which was filed August 6, 2012 and which, pursuant to trademark law, gives Opposer no rights to oppose Applicant's earlier filed application. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that he first learned of the existence of myBody, LLC and the completely dissimilar logo it uses on its anti-aging serum in a correspondence dated August 5, 2012, from Opposer's legal counsel in this opposition. Said correspondence falsely stated that Opposer used its logo on a "skin care cream" in direct contravention to what Opposer represented to the United States Patent and Trademark Office in the application of its failed and abandoned trademark application, serial number 85/132776. Indeed, Opposer represented that its product was an anti-aging serum in an attempt to distinguish its anti-aging serum from a registered mark cited in opposition to its serial number 85/132776 application. Applicant later learned that Opposer is now falsely identifying its anti-aging serum as a skin care cream in this opposition and in application serial number 85/695,722; months after Applicant filed his mark for federal registration. Opposer filed for federal registration of the mark identified in application serial number 85/695,722 the day after legal counsel sent correspondence to Applicant demanding that Applicant abandon his application.

Answer:

INTERROGATORY NO. 10: State all relevant facts and circumstances concerning when Applicant first learned of Opposer's Mark.

Eyes Only" designation of said information.
 use or prospective use of Applicant's Mark, to the extent any exist, pursuant to an "Attorneys
 distributions, authorizations, permissions or consents) entered into by Applicant regarding any

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of

Answer:

INTERROGATORY NO. 13: Identify the actual and/or anticipated purchasers or users of products offered or intended to be offered under Applicant's Mark. As used in this interrogatory "purchaser or users" refer to any class of purchasers or users, such as may be identified by industry, business, individual or trade category.

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that he has not yet determined the channels of trade he intends to use, promote, and sell products intended to be offered under Applicant's Mark.

Answer:

INTERROGATORY NO. 12: Identify the channels of trade Applicant uses or intends to use to promote and sell products offered or intended to be offered under Applicant's Mark.

See response to Interrogatory No. 10.

Answer:

INTERROGATORY NO. 11: State all relevant facts and circumstances concerning when Applicant first learned of Opposer.

This interrogatory is objected to as overbroad, vague and unduly burdensome. Applicant has no way of knowing the universe of uses of Applicant's Mark on the internet. Any attempt for Applicant to determine a response to this interrogatory would necessitate speculation on the part of Applicant. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly

Answer:

INTERROGATORY NO. 15: Identify all uses or intended uses of Applicant's Mark on the Internet.

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that he has not yet determined any Dealers.

Answer:

INTERROGATORY NO. 14: Identify all of your Dealers and intended Dealers, the locations of your Dealers and intended Dealers, and the total amount of sales by month and in dollars to each Dealer.

This interrogatory is objected to as overbroad, vague and unduly burdensome. It is also objected to as seeking potential attorney-client communications, work-product, or other non-discoverable information. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that he has not yet determined the anticipated purchasers or users of products intended to be offered under Applicant's Mark, although he anticipates initial marketing for children's and adult use.

contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of

Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's

answer, Applicant directs Opposer to the following website: www.myherolotion.com.

Applicant further directs Opposer to search the internet for uses of Applicant's mark.

INTERROGATORY NO. 16: Identify and describe any inquiries and communications Applicant has received regarding any association, affiliation and relationship with Opposer.

Answer:

Applicant states: None.

INTERROGATORY NO. 17: Describe all facts that form the basis for Applicant's denial in paragraph three of Applicant's Answer.

Answer:

Applicant states that it engaged in the development of business relationship, sales and

promotion development, utilizing Applicant's Mark.

INTERROGATORY NO. 18: Describe all facts that form the basis for Applicant's denial in paragraph eight of Applicant's Answer.

Answer:

Applicant's Mark is not the same as Opposer's Mark. Applicant's Mark is not similar to

Opposer's logo utilized on its products. Opposer attempted to register the mark of application

serial number 85/695,722 in a bad faith attempt to mimic Applicant's Mark. Opposer also now

attempts to define the mark of application serial number 85/695,722 as included in the mark it

has been using for its anti-aging serum.

INTERROGATORY NO. 19: Describe all facts that form the basis for Applicant's denial in paragraph nine of Applicant's Answer.

This contention interrogatory is objected to as calling for legal conclusions. Accordingly, Applicant objects to this Interrogatory to the extent it is inconsistent with and seeks to impose burdens and requirements beyond those expressly contemplated by the discovery, scope, and limits of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure. Without waiving this objection and subject thereto, and expressly reserving the right to supplement Applicant's answer, Applicant states that he filed his application prior to Opposer filing its application serial number 85/695,722. Opposer is now

Answer:

INTERROGATORY NO. 21: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 16 of Applicant's Answer.

waiver of such defense.

Discovery is continuing. Applicant asserted its Affirmative Defense to prevent any

Answer:

INTERROGATORY NO. 20: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 14 of Applicant's Answer.

Opposer does.

The products identified in the application for Applicant's Mark are not the same as Opposer's Mark. On information and belief, and based on representation to the U.S.P.T.O., Opposer has been and is selling an anti-aging serum. Applicant's application is for cosmetic preparations, which the U.S.P.T.O. has already found to be appropriate and permissible in light of the existence not only of Opposer's logo, but also in light of Opposer's application serial number 85/695,722. Further, Applicant has no intent to market or sell its product in the manner

Answer:

INTERROGATORY NO. 24: Identify each person who has supplied documents or information for or participated in Applicant's responses and document production in response to Opposer's First Request for Production of Documents from Applicant served simultaneously herewith.

Opposer abandoned its application for federal registration of the mark identified in application serial number 85/132776. Opposer made representations to the trademark office in the prosecution of application serial number 85/132776 that contradict its claims in this opposition that represent a fraud on the trademark office. In an attempt to mirror Applicant's application, Opposer also now named its use for it applied for mark in serial number 85/695,722 for skin care creams although in this opposition it claims the use of its anti-aging serum as supporting its application al serial number 85/695,722. Discovery is continuing.

Answer:

INTERROGATORY NO. 23: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 18 of Applicant's Answer.

waiver of such defense.

Discovery is continuing. Applicant asserted its Affirmative Defense to prevent any

Answer:

INTERROGATORY NO. 22: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 17 of Applicant's Answer.

serial number 85/695,722. Discovery is continuing.

misrepresenting its products to the U.S.P.T.O. after previously representing its product as an anti-aging serum then abandoning its application. Furthermore, Applicant's application is for cosmetic preparations, which the U.S.P.T.O. has already found to be appropriate and permissible in light of the existence not only of Opposer's logo, but also in light of Opposer's application

Damon L. Ward

Dated: March 19, 2012



Certificate of Service and Transmittal: I hereby certify that a copy of the foregoing *ANSWERS TO OPPOSER'S INTERROGATORIES* is being sent by first class mail, postage prepaid, to: mybody, LLC through its counsel Jennifer L. Lefere, Hool Law Group, PLC, Suite 1020, 2398 East Camelback Road, Phoenix, AZ 85016.

Damon L. Ward
301 Fourth Avenue South
Suite 378N
Minneapolis, MN 55415
Telephone: (612) 353-9770
Fax: (866) 759-6030
E-mail: dward@wardlawgroup.com

By:



WARD LAW GROUP

Dated: March 18, 2013

AS TO OBJECTIONS ONLY

of interrogatories allowed under the Federal Rules of Civil Procedure.

Applicant objects to these discovery requests to the extent that they exceed the number

Answer:

INTERROGATORY NO. 26: Identify each person who has participated in or supplied information for Applicant's responses to Opposer's First Requests for Admissions served simultaneously herewith.

Applicant with the assistance of counsel.

Answer:

INTERROGATORY NO. 25: Identify each person who has participated in or supplied information for Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

Applicant with the assistance of counsel.

Answer:

I affirm under the penalties for perjury that the foregoing answers to interrogatories are true.

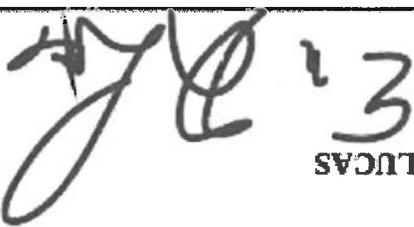
ERIC LUCAS
By 

EXHIBIT F

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

In the Matter of Application Serial No. 85/597114
Mark: MY HERO
Published in the *Official Gazette* on August 28, 2012

MYBODY, LLC

Opposer,

v.

Opposition No. 91206915

ERIC LUCAS,

Applicant.

APPLICANT'S ANSWER'S TO OPPOSER'S INTERROGATORIES (SET 2)

**TO: OPPOSER ABOVE NAMED AND ITS ATTORNEYS, JENNIFER L. LEFERE,
HOOL LAW GROUP, PLC, SUITE 1020, 2398 EAST CAMELBACK ROAD,
PHOENIX, ARIZONA 85016.**

Pursuant to 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and Rule 33 of the Federal Rules of Civil Procedure, Applicant hereby furnishes objections and responses the following Answers to Opposer's Interrogatories (Set 2).

Applicant states that he has not completed his investigation or discovery relating to this case, and has not completed his preparation for trial. The following responses are based on an incomplete investigation, and therefore, are necessarily limited by the records and information in existence, currently unknown, presently recollected and thus far discovered in the course of preparing these responses. Therefore, these responses are given without prejudice to Applicant's right to produce at trial subsequently discovered facts or information. Applicant specifically

reserves the right to supplement his responses as discovery is ongoing and other information may be made available.

Accordingly, Applicant, for his answers, objections and responses to Opposer's Interrogatories (Set 2) responds as follows:

GENERAL OBJECTIONS

1. Applicant objects to the discovery requests to the extent that they attempt to impose duties different from or inconsistent with the requirements of 37 C.F.R. Part 2, § 2.120 of the Rules of Practice in Trademark Cases and the Federal Rules of Civil Procedure.

2. Applicant objects to the discovery requests to the extent that they seek information that is privileged from discovery by the virtue of attorney-client, attorney work product privilege(s), or other privileges or immunity defenses. Information subject to such objections will be withheld.

3. Applicant objects to the discovery requests to the extent that they impose any undue burden or expense on Applicant, or are not reasonably calculated to lead to the discovery of admissible evidence.

4. Applicant's responses are provided subject to all objections to admissibility that may be interposed at trial.

5. In those instances where Applicant's response indicates that responsive documents will be produced (pursuant to Federal Rule of Civil Procedure 34), copies will be made available for inspection by counsel for Applicant, to the extent such documents exist, at a mutually agreeable time and location.

6. Applicant objects to the unlimited time period of some of these discovery requests as overbroad and irrelevant, and not calculated to lead to discovery of admissible evidence.

7. Applicant objects to Opposer's definitions and instructions as overbroad and vague.

ANSWERS TO INTERROGATORIES (SET 2)

INTERROGATORY NO. 26: Identify each person who has participated in or supplied information for Applicant's responses to Opposer's First Requests for Admissions served simultaneously herewith.

Answer:

Applicant, Eric Lucas.

INTERROGATORY NO. 27: Identify the exact date of first use of Applicant's Mark in commerce, as defined in TMEP §901.01.

Answer:

Applicant states: 03/15/2013.

INTERROGATORY NO. 28: (a) Identify the exact date of first use of Applicant's Mark in interstate commerce, as defined in TMEP §901.03.

Answer:

Applicant states: 03/15/2013.

INTERROGATORY NO. 29: Identify the manner in which applicant's mark was used on the date specified in your answer to interrogatory no. 27 above.

Answer:

Applicant states that the mark was used on Applicant's website for solicitation and sales of Applicant's product.

INTERROGATORY NO. 30: Identify the manner in which applicant's mark was used on the date specified in your answer to interrogatory no. 28 above.

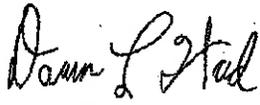
Answer:

Applicant states that the mark was used on Applicant's website for solicitation and sales of Applicant's product.

AS TO OBJECTIONS ONLY

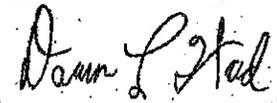
Dated: January 31, 2014

WARD LAW GROUP

By: 
Damon L. Ward
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Minneapolis, MN 55415
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Certificate of Service and Transmittal: I hereby certify that a copy of the foregoing *ANSWERS TO OPPOSER'S SECOND SET OF INTERROGATORIES* is being sent by first class mail, postage prepaid, to: mybody, LLC through its counsel Michael Hool, Hool Law Group, PLC, Suite 1020, 2398 East Camelback Road, Phoenix, AZ 85016 on the date specified below:

Dated: January 31, 2014


Damon L. Ward

I affirm under the penalties for perjury that the foregoing answers to interrogatories are true.

ERIC LUCAS

By

A handwritten signature in black ink, appearing to read "Eric Lucas", written over a horizontal line. The signature is stylized and cursive.