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

Proceeding	91209290
Party	Defendant Nutri-Health Supplements, LLC
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Date	03/20/2014
Attachments	Answer.pdf(32972 bytes)

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

IN THE MATTER OF APPLICATION SERIAL NO. 85/625,402

BACH FLOWER REMEDIES LIMITED)	
)	
Opposer,)	
)	Opposition No. 91209290
v.)	
)	
NUTRI-HEALTH SUPPLEMENTS, LLC)	
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Nutri-Health Supplements, LLC (“Applicant”), hereby answers Bach Flower Remedies Limited’s (“Opposer”) Notice of Opposition as follows:

Responding to the preamble of the Notice of Opposition, Applicant denies Opposer’s allegations that it will be damaged by registration of the ADVANCED CELL RESCUE mark shown in Application Serial No. 85/625,402, and defers to the Trademark Trial and Appeal Board (the “Board”) for all conclusions of law pertaining thereto.

1. Applicant admits the allegations of paragraph 1.
2. Applicant states that the allegations of paragraph 2 are vague and therefore incapable of response. To the extent Opposer is alleging that Applicant did not use the mark ADVANCED CELL RESCUE in interstate commerce prior to May 15, 2012, Applicant admits such allegation. Except as so admitted, Applicant denies the allegations of paragraph 2.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 3 and, therefore, denies such allegations, leaving Opposer to its burden of proof. With regard to the second sentence of

paragraph 3, Applicant admits, based on records available through the U.S. PTO's Trademark Status and Document Retrieval ("TSDR") database, that on May 28, 2008 Opposer filed Application Serial No. 77/485,289 to register the mark RESCUE for "herbs and flowers for medicinal purposes; medicinal drinks containing flower remedies; medicated confectionery; medicated candy; medicated gel capsules and medicated chewing gum containing flower remedies; dietary supplements prepared from plants and flowers; dietary and nutritionally fortified food products containing flower remedies for treating emotional shock, trauma and other emotional ailments and conditions; homeopathic pharmaceutical preparations made from flower extracts for alleviating emotional and mental stress; nutritional drinks for animals" in Class 5. Except as so admitted, Applicant denies the allegations of paragraph 3.

4. Applicant admits, based on records available through the TSDR database, that on May 28, 2008 Opposer filed Application Serial No. 77/485,289 for the goods listed therein. Except as so admitted, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 and, therefore, denies such allegations, leaving Opposer to its burden of proof.

5. Applicant admits, based on records available through the TSDR database, that Opposer is listed as owner of U.S. Reg. No. 1,237,564 for the mark RESCUE REMEDY, which issued on May 10, 1983; U.S. Reg. No. 1,822,260 for the mark RESCUE REMEDY, which issued on February 22, 1994; and U.S. Reg. No. 2,517,685 for the mark RESCUE, which issued on December 11, 2001. Applicant admits, based on records available through the TARR database, that Opposer filed application Serial No. 77/485,289 to register the mark RESCUE on May 28, 2008. Applicant further admits that Exhibits A and B to the Notice of Opposition purport to contain printouts from the TSDR database indicating the current status and ownership

of Registration Nos. 1,237,564; 1,822,260; 2,517,685 and of Application Serial No. 77/485,289.

Except as so admitted, Applicant denies the allegations of Paragraph 5.

6. Applicant states that the allegations of paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and, therefore, denies such allegations, leaving Opposer to its burden of proof.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and, therefore, denies such allegations, leaving Opposer to its burden of proof.

8. Applicant admits that ADVANCED CELL RESCUE, RESCUE and RESCUE REMEDY each include the word “RESCUE” and further states that the content of each such mark speaks for itself. Except as so admitted, Applicant denies the allegations of paragraph 8.

9. Applicant denies the allegations of paragraph 9.

10. Applicant denies the allegations of paragraph 10.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Notice of Opposition fails to state a claim upon which relief can be granted and on which the Notice of Opposition may be sustained in whole or in part by the Board.

Second Affirmative Defense

The Notice of Opposition is barred by the doctrines of estoppel, waiver, laches and/or unclean hands.

Third Affirmative Defense

The Notice of Opposition is barred by the doctrines of abandonment and/or acquiescence.

ADDITIONAL DEFENSES

Applicant gives notice that it intends to rely upon such other and further defenses, and to assert such counterclaims, as may become available through discovery or otherwise and reserves the right to assert and rely upon such further defenses and/or counterclaims as of right or by appropriate motion.

WHEREFORE, Applicant Nutri-Health Supplements, LLC prays that this Opposition be dismissed and that Application Serial No. No. 85/625,402 be forwarded for issuance of a Notice of Allowance.

Applicant,

NUTRI-HEALTH SUPPLEMENTS, LLC

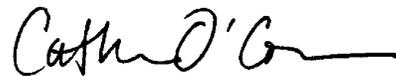
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2014 a true and correct copy of the foregoing Answer to Notice of Opposition was served upon the attorneys of record for the Opposer by electronic mail and first class mail, postage prepaid, in an envelope addressed as follows:

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Catherine Dugan O'Connor