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

Proceeding	91210883
Party	Defendant Societe des Produits Nestle S.A.
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Submission	Answer
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Date	07/12/2013
Attachments	answer.pdf(137216 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Nature's Path Foods Inc.,)	
)	
Opposer,)	TTAB Opp. No. 91210883
)	
v.)	U.S. Serial No. 85/609,486
)	
Société des Produits Nestlé S.A.,)	Mark: FUEL FOR OPTIMUM
)	PERFORMANCE
Applicant.)	

Société des Produits Nestlé S.A.'s Answer and Additional Defenses

Answer

This is Applicant Société des Produits Nestlé S.A.'s ("Applicant") Answer to the Notice of Opposition filed by Opposer Nature's Path Foods Inc. ("Opposer"). To the extent any allegation of the Notice of Opposition is not expressly and specifically admitted, that allegation is hereby denied.

Applicant answers the Notice of Opposition as follows:

1. Applicant denies that Opposer has a "family" of OPTIMUM marks. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 1 and therefore denies them.
2. Applicant denies that Opposer has a "family" of OPTIMUM marks. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 2 and therefore denies them.
3. Applicant admits the allegations of paragraph 3.
4. Applicant denies the allegations of paragraph 4.
5. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 5 and therefore denies them.

6. Applicant denies the allegations of paragraph 6.
7. Paragraph 7 states a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 7.
8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 8.
9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations of paragraph 9.
10. Applicant denies the allegations of paragraph 10.
11. Applicant denies the allegations of paragraph 11.

Additional Defenses

For its additional defenses, Applicant states:

1. The notice of opposition fails to state a claim upon which relief may be granted.
2. There is no likelihood of confusion between the parties' respective marks because, among other things, the differences between the marks are sufficient to avoid a likelihood of confusion.
3. Opposer will not be damaged or injured by registration of FUEL FOR OPTIMUM PERFORMANCE because Opposer does not own the exclusive right to the term OPTIMUM.
4. Opposer's claims are barred by the doctrines of unclean hands and trademark misuse.
5. Applicant reserves its right to amend its Answer to assert any defense or counterclaim that is later discovered during these proceedings.

ACCORDINGLY, Applicant respectfully requests that the Board enter judgment in Applicant's favor, dismiss the notice of opposition with prejudice, and grant all other and further relief to which Applicant is entitled.

Respectfully submitted,

/s/ Thomas A. Polcyn

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via First Class Mail, postage prepaid, this 12th day of July, 2013, to the following:

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/s/ Thomas A. Polcyn