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

Proceeding	91211181
Party	Defendant Vivo Per Lei Inc.
Correspondence Address	CHRISTOPHER DITICO VIVO PER LEI INC. 20255 Corisco Street Chatsworth, CA 91311 cditico@mazalent.com;adi@mazalent.com
Submission	Answer
Filer's Name	Christopher Ditico
Filer's e-mail	cditico@mazalent.com
Signature	/Christopher Ditico/
Date	07/26/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NYX, LOS ANGELES INC., Opposer Vs VIVO PER LEI INC., Applicant	Proceeding No. 91211181 Marks: BIONYX; BIONYX and design Application No. 85/862,671; 85/862,710 Published: June 11, 2013
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Vivo Per Lei, Inc. (“Applicant”), through their undersigned attorney, submit their Answer to the Notice of Opposition (“Opposition”) filed by NYX, Los Angeles, Inc. (“Opposer” or “NYX”) dated June 19, 2013 as follows:

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies such allegations.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore denies such allegations.
3. Upon information and belief, Applicant admits that Opposer is the owner of U.S. Registration Nos. 3,310,409 and 4,044,027 cited in paragraph 3, and that USPTO records for the ‘409 and ‘027 registrations reflect the mark, goods and services, as well as registration dates alleged in paragraph 3. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 3, including but not limited to the validity of the use dates alleged in the registrations, and therefore denies such allegations.

4. Upon information and belief, Applicant admits that Opposer is the owner of U.S. Application Serial Nos. 85/920,794, 85/848,189, 85/768,074, 85/768,100, 85/932,107 and 85/932,111 cited in paragraph 4, and that USPTO records for the ‘794, ‘189, ‘074, ‘100, ‘107 and ‘111 applications reflect the mark, goods and services, as well as use dates alleged in paragraph 4. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 4, including but not limited to the validity of the use dates alleged in the applications, and therefore denies such allegations.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 5 and therefore denies such allegations.

6. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 6 concerning the NYX Family of Marks becoming distinctive of the goods and services provided there under, and therefore denies such allegations. Applicant denies the remaining allegations in paragraph 6, namely, that the distinctiveness of Opposer’s NYX Family of Marks would be lost if Applicant’s Marks are allowed to register.

7. Applicant admits the allegations contained in paragraph 7.

8. Applicant admits the allegations contained in paragraph 8.

9. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 9, namely that Opposer’s earliest use date is June 1, 1999, and therefore denies all allegations in paragraph 9.

10. Applicant denies the allegations contained in paragraph 10.

11. Applicant denies the allegations contained in paragraph 11.

12. Applicant denies the allegations contained in paragraph 12.

13. Applicant denies the allegations contained in paragraph 13.

14. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 14 and therefore denies such allegations.

15. Applicant denies the allegations contained in paragraph 15.

16. Applicant denies the allegations contained in paragraph 16.

17. Applicant denies the allegations contained in paragraph 17.

18. Applicant denies the allegations contained in paragraph 18.

Affirmative Defenses

1. Opposer fails to state a claim upon which relief may be granted.

2. Applicant reserves the right to assert any and all other affirmative defenses of which they become aware during the pendency of this matter.

WHEREFORE, Applicant prays that Opposer's Opposition be dismissed and that judgment be entered in favor of Applicant, Vivo Per Lei, Inc.

Dated: July 26, 2013

Respectfully submitted,

/Christopher Ditico/
Christopher Ditico
20255 Corisco Street
Chatsworth, CA 91311
Phone: (818) 886-3200
Fax: (818) 886-3257
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Notice of Opposition is being served upon
Opposer by mailing a true copy thereof by first class mail, postage prepaid, addressed to:

Patchen M. Haggerty
DORSEY & WHITNEY LLP
701 Fifth Ave., Ste. 6100
Seattle, WA 98104
UNITED STATES
ip.docket.se@dorsey.com, tmseattle@dorsey.com,
haggerty.patchen@dorsey.com

on July 26, 2013.

By: /Christopher Ditico/
Christopher Ditico