

ESTTA Tracking number: **ESTTA561751**

Filing date: **09/27/2013**

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

Proceeding	91212074
Party	Defendant Dynamic Mouth Devices LLC
Correspondence Address	GREGORY M. REILLY LERNER, DAVID, LITTENBERG, KRUMHOLZ & ME 600 SOUTH AVE W STE 2 WESTFIELD, NJ 07090-1497  trademarkadmin@ldlkm.com
Submission	Answer
Filer's Name	Gregory M. Reilly
Filer's e-mail	greilly@ldlkm.com, litigation@ldlkm.com
Signature	/Gregory M. Reilly/
Date	09/27/2013
Attachments	answer to notice of opposition.pdf(21939 bytes )



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 the allegations.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 and therefore denies the allegations.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 and therefore denies the allegations.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 and therefore denies the allegations.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 and therefore denies the allegations.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and therefore denies the allegations.

13. Applicant denies that it has a current place of business at 16 Pocono Road, Suite 116, Denville, New Jersey 07834. Applicant admits that the goods identified in paragraph 13 are those that were published in the Trademark Official Gazette on February 19, 2013 and that Applicant has an intent to use the mark PEPSIP in connection with such goods. Applicant admits the remaining allegations of paragraph 13.

14. Applicant denies the allegations of paragraph 14.

15. Applicant admits that the alleged first use dates, application filing dates, and registration dates for the marks identified in the table in paragraph 9 precede Applicant's filing date for the application at issue, but Applicant denies the remaining allegations of paragraph 15.

16. Applicant denies the allegations of paragraph 16.

17. Applicant denies the allegations of paragraph 17.
18. Applicant denies the allegations of paragraph 18.
19. Applicant denies the allegations of paragraph 19.
20. Applicant denies the allegations of paragraph 20.

**FIRST AFFIRMATIVE DEFENSE**

The Notice of Opposition fails to state a claim upon which relief can be granted.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed, and that Applicant's Trademark Application Serial No. 85/555,012 be allowed.

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP

Dated: September 27, 2013

By: s/ Greg M. Reilly

Greg M. Reilly  
600 South Avenue West  
Westfield, NJ 07090-1497  
Tel: 908.654.5000  
Fax: 908.654.7866  
E-mail: greilly@ldlkm.com;  
litigation@ldlkm.com  
*Attorneys for Dynamic Mouth Devices LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the within ANSWER TO NOTICE OF OPPOSITION was served upon the following counsel of record this 27th day of September, 2013, as follows:

**VIA E-MAIL**

Elizabeth N. Bilus  
PEPSICO, INC.  
700 Anderson Hill Road  
Purchase, NY 10577  
Tel:  
E-Mail: [trademark@pepsico.com](mailto:trademark@pepsico.com)  
Elizabeth.bilus@pepsico.com

s/Greg M. Reilly  
Greg M. Reilly

DIAMON 10.2A-005  
Opposition No. 91212074