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

Proceeding	91213005
Party	Defendant N.V.E., Inc.
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Date	11/05/2013
Attachments	Answer to Notice of Opposition (NOT JUST ANIMAL PROTEIN).pdf(93243 bytes)

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

UNIVERSAL PROTEIN SUPPLEMENTS
CORPORATION,

Opposer,

v.

N.V.E., INC.,

Applicant.

In re Serial No. 85896474

Mark: STACKER 2 NOT JUST ANIMAL
PROTEIN

Opposition No.: 91213005

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, N.V.E., Inc., through its attorneys, Nicoll, Davis & Spinella, LLP, responds to the Notice of Opposition as follows:

1. Applicant denies that Opposer will be damaged by registration of the mark shown in U.S. Trademark Serial No. 85896474.
2. Paragraph 2 is admitted.
3. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 3 of the Notice of Opposition, and therefore denies same.
4. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 4 of the Notice of Opposition, and therefore denies same.
5. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 5 of the Notice of Opposition, and therefore denies same.
6. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 6 of the Notice of Opposition, and therefore denies same.

7. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 7 of the Notice of Opposition, and therefore denies same.

8. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 8 of the Notice of Opposition, and therefore denies same.

9. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 9 of the Notice of Opposition, and therefore denies same.

10. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 10 of the Notice of Opposition, and therefore denies same.

11. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 11 of the Notice of Opposition, and therefore denies same.

12. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 12 of the Notice of Opposition, and therefore denies same.

13. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 13 of the Notice of Opposition, and therefore denies same.

14. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 14 of the Notice of Opposition, and therefore denies same.

15. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 15 of the Notice of Opposition, and therefore denies same.

16. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 16 of the Notice of Opposition, and therefore denies same.

17. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 17 of the Notice of Opposition, and therefore denies same.

18. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 18 of the Notice of Opposition, and therefore denies same.

19. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 19 of the Notice of Opposition, and therefore denies same.

20. Applicant denies each and every allegation in Paragraph 20.

21. Paragraph 21 is admitted.

22. Paragraph 22 is admitted.

23. Applicant denies that Applicant's Mark incorporates any elements of Opposer's Marks or Opposer's Family of Marks.

24. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 24 of the Notice of Opposition, and therefore denies same.

25. Applicant denies each and every allegation in Paragraph 25.

26. Applicant denies each and every allegation in Paragraph 26.

27. Applicant denies each and every allegation in Paragraph 27.

28. Applicant repeats and realleges Paragraphs 1 through 27 above, as if the same were fully set forth herein.

29. Applicant denies each and every allegation in Paragraph 29.

30. Applicant denies each and every allegation in Paragraph 30.

31. Applicant repeats and realleges Paragraphs 1 through 30 above, as if the same were fully set forth herein.

32. Applicant denies each and every allegation in Paragraph 32.

33. Applicant denies each and every allegation in Paragraph 33.

34. Applicant repeats and realleges Paragraphs 1 through 33 above, as if the same were fully set forth herein.

35. Applicant denies each and every allegation in Paragraph 35.

AFFIRMATIVE DEFENSES

1. Opposer cannot claim any ownership rights in the mark.
2. Opposer does not have rights in the mark superior to those of Applicant.
3. Opposer's trademark rights, if any, are limited to the marks ANIMAL RAGE, ANIMAL FLEX, ANIMAL PUMP, ANIMAL CUTS, ANIMAL PAK, ANIMAL PM, ANIMAL NITRO, A ANIMAL Design, and ANIMAL TEST, which are not confusingly similar to Applicant's Mark STACKER 2 NOT JUST ANIMAL PROTEIN.
4. Opposer will not be damaged by registration of Applicant's mark.
5. The Opposition is barred by the doctrine of estoppel.
6. Opposer's claims are barred in whole or in part by the unclean hands doctrine.
7. Opposer's marks are weak and highly diluted and, to the extent they are capable of functioning as trademarks, their scope of protection is exceedingly narrow.

8. The commercial impression projected by Opposer's marks are separate and distinct from the commercial impression projected by Applicant's mark.

9. The respective consumers of the parties' goods and services are discriminating purchasers.

10. The respective goods of the parties are sufficiently dissimilar so as to avoid a likelihood of confusion.

11. The opposition fails to state a claim entitling the Opposer to relief in that the respective marks are so different in look, sound and meaning.

12. Opposer has acquiesced in the use of Applicant's mark by Applicant.

13. Opposer's claims are barred in whole or in part by the laches doctrine.

WHEREFORE, Applicant prays that the Notice of Opposition initiated by the Opposer against Ser. No. 85896474 be dismissed.

DATED: November 5, 2013

Respectfully submitted,
Attorneys for Applicant

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this 5th day of November, 2013 to the attorneys for the Opposer at the following address:

Richard M. LaBarge
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/s/ *brian gaynor*
Brian M. Gaynor