

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

BUO

Mailed: February 12, 2014

Opposition No. 91213005

Universal Protein Supplements  
Corporation

v.

N.V.E., Inc.

**Benjamin U. Okeke, Interlocutory Attorney:**

This order supersedes the Board's February 2, 2014 order. The Board regrets any inconvenience to the parties.

Opposer's motion, filed November 27, 2013, to strike certain affirmative defenses asserted in applicant's answer is **GRANTED** as conceded, because applicant failed to respond thereto.<sup>1</sup> Trademark Rule 2.127(a); *Central Mfg., Inc. v.*

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<sup>1</sup> We note, however, that the result would have been the same had the Board considered opposer's motion on the merits. Applicant's assertions in paragraphs 1-3 and 7-10 are merely amplifications of its denials to opposer's Section 2(d) claim. *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1292 (TTAB 1999). While these are not appropriate affirmative defenses, the Board does not find it necessary to strike this language from the Answer.

However, paragraphs 5-6, and 11-13 fail to allege sufficient facts to place opposer on notice of the defenses being asserted against it. See *IdeasOne Inc. v. Nationwide Better Health Inc.*, 89 USPQ2d 1952, 1953 (TTAB 2009); *Ohio State Univ.*, 51 USPQ2d at

*Third Millennium Tech., Inc.*, 61 USPQ2d 1210 (TTAB 2001);  
*Boston Chicken, Inc. v. Boston Pizza Int'l, Inc.*, 53 USPQ2d  
1053 (TTAB 1999).

Accordingly, **affirmative defenses 1, 5, 6, 11, 12, and 13 are STRICKEN** from the answer and will be given no further consideration.

Additionally, on its own discretion the Board reviewed the pleadings as prompted by this motion, and also strikes affirmative defense number 4 as futile. This is not an affirmative defense, but an attack on opposer's standing. Opposer's standing, i.e. its "real interest" in the matter has been established by its pleading of its registrations. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1027 (Fed. Cir. 1999); *Research in Motion Limited v. Defining Presence Marketing Group Inc.*, 102 USPQ2d 1187, 1190 (TTAB 2012) (pleaded registrations of record). There is no requirement that actual damage be pleaded or proved in order to establish standing or to prevail in an opposition or cancellation proceeding. See *Cunningham*, 55 USPQ2d at 1844.

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1292 (primary purpose of pleadings "is to give fair notice of the claims or defenses asserted").

Accordingly this defense is futile, and is therefore **STRICKEN** and will be given no further consideration.

Conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	2/20/2014
Discovery Opens	2/20/2014
Initial Disclosures Due	3/22/2014
Expert Disclosures Due	7/20/2014
Discovery Closes	8/19/2014
Plaintiff's Pretrial Disclosures	10/3/2014
Plaintiff's 30-day Trial Period Ends	11/17/2014
Defendant's Pretrial Disclosures	12/2/2014
Defendant's 30-day Trial Period Ends	1/16/2015
Plaintiff's Rebuttal Disclosures	1/31/2015
Plaintiff's 15-day Rebuttal Period Ends	3/2/2015

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.