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

Proceeding	91214030
Party	Defendant Food Storage Network, LLC
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Date	01/24/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Nutrishop, Inc.	)	
	)	
Opposer,	)	In the matter of trademark application
	)	Serial No. 85/706,876
v.	)	
	)	Opposition No. 91214030
Food Storage Network, LLC	)	
	)	
Applicant.	)	
	)	

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**ANSWER TO NOTICE OF OPPOSITION**

Applicant Food Storage Network, LLC (“FSN” or “Applicant”), through undersigned counsel, responds to Opposer Nutrishop, Inc.’s (“Nutrishop” or “Opposer”) Notice of Opposition (“Notice of Opposition”) as follows: FSN denies that Nutrishop will be damaged by the registration of Applicant’s mark, Serial No. 85/706,876 for the mark NUTRISTORE as claimed in the preamble to the Notice of Opposition. Furthermore, in relation to the allegations contained in the enumerated paragraphs in the Notice of Opposition, FSN responds as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and, therefore, denies them.

2. Applicant admits that, to the best of its knowledge and belief, Opposer is the owner of the Federal registrations set forth in paragraphs 4 and 5 of the Notice of Opposition (the “NUTRISHOP Marks”). Applicant is otherwise without sufficient knowledge or information to

form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and, therefore, denies them.

3. Whether Opposer's NUTRISHOP Marks qualify as famous marks is a conclusion of law to which no answer is required. Applicant is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and, therefore, denies them.

4. Whether U.S. Trademark Registration No. 3,018,521 (the "'521 Registration") is incontestable is a conclusion of law to which no answer is required. Applicant admits that, to the best of its knowledge and belief, Opposer is the owner of the '521 Registration—which was filed on September 25, 2003 and issued on November 25, 2005—and that its filing and registration dates predate the filing of the application for Applicant's NUTRISTORE mark. Applicant is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies them.

5. Applicant admits that, to the best of its knowledge and belief, Opposer is the owner of U.S. Trademark Registration No. 3,875,719 (the "'719 Registration")—which was filed on October 13, 2009 and issued on November 16, 2010—and that its filing and registration dates predate the filing of the application for Applicant's NUTRISTORE mark. Applicant is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition and, therefore, denies them.

6. The validity or invalidity of Opposer's NUTRISHOP Marks and the extent of Opposer's exclusive legal rights in them are conclusions of law to which no answer is required. Applicant is otherwise without sufficient knowledge or information to form a belief as to the

truth of the allegations contained in paragraph 6 of the Notice of Opposition and, therefore, denies them.

7. Applicant denies the allegations of paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations of paragraph 8 of the Notice of Opposition.

9. Whether Opposer's NUTRISHOP Marks qualify as famous marks is a conclusion of law to which no answer is required. Applicant is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 of the Notice of Opposition and, therefore, denies them.

10. The extent of Opposer's exclusive rights in the NUTRISHOP Marks is a conclusion of law to which no answer is required. Applicant is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 of the Notice of Opposition and, therefore, denies them.

11. Applicant denies the allegations of paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations of paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations of paragraph 13 of the Notice of Opposition.

#### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state any claim upon which relief may be granted.

2. The Opposer's Notice of Opposition is barred by the equitable doctrines of laches, acquiescence, and estoppel.

3. Applicant reserves the right to add other affirmative defenses that may come to light during the pendency of this action by discovery or otherwise.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice and that the Board grant such other and further relief as it shall deem appropriate.

Dated: January 24, 2014

Respectfully Submitted,

/Brian C. Kunzler/  
Brian C. Kunzler (Utah Bar No. 6912)  
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Salt Lake City, UT 84111  
Attorney for Food Storage Network, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2014 a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served by first-class U.S. mail, postage prepaid, upon counsel for Opposer at the following address:

Catherine J. Holland  
Knobbe, Martens, Olson & Bear, LLP  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92614

By: /Heather A. Babb/