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

Proceeding	91218720
Party	Defendant NutraMarks, Inc.
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Date	12/09/2014
Attachments	Answer to Notice of Opposition.pdf(16130 bytes )

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

Affordable Naturals, LLC,  Opposer,  v.  NutraMarks, Inc.,  Applicant.	Opposition No.: 91218720  Mark: SIMPLERS  Serial No.: 86078760
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**ANSWER TO NOTICE OF OPPOSITION**

Applicant NutraMarks, Inc. (“Applicant”), by and through its counsel, responds as follows to the Notice of Opposition:

1. Applicant states that Opposer’s Reg. No. 3935337 for the mark SIMPLY speaks for itself with respect to the application and registration dates, and the goods recited in the registration. Applicant lacks sufficient knowledge and information to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the Notice of Opposition and therefore denies them.

2. Applicant denies the allegations contained in paragraph 2 of the Notice of Opposition to the extent that the goods recited in Applicant’s application for the SIMPLERS mark are not for “cosmetic preparations” standing alone.

3. Applicant denies the allegations contained in paragraph 3 of the Notice of Opposition.

4. Applicant admits that it is a Delaware corporation, denies that it “produced” cosmetic preparations and dietary supplements in the United States, and denies all remaining allegations contained in paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations in paragraph 5 of the Notice of Opposition, as the phrase “Applicant through NutraMarks, Inc.” is unintelligible since the Applicant is NutraMarks, Inc. Applicant admits that copies of product labels used in connection with Applicant’s SIMPLERS mark are attached as Exhibit B to the Notice of Opposition. Applicant admits that, from 1983 to the present, it (either through its predecessor-in-interest or related companies) has sold and distributed various cosmetic preparation products in the United States under the SIMPLERS mark, examples of which are shown in Exhibit B. Applicant denies all remaining allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant lacks sufficient knowledge and 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 admits that its SIMPLERS products have been advertised and sold via the Internet, and lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the Notice of Opposition and therefore denies them.

8. Applicant is still in the process of investigating whether a likelihood of confusion exists between Opposer’s claimed use of SIMPLY and Applicant’s use of SIMPLERS and, therefore, lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 8 of the Notice of Opposition and therefore denies them.

9. Applicant denies that its registration would cause injury or damage to Opposer. Opposer's allegation regarding the legal effect of Applicant's proposed registration is a legal conclusion to which no response is required. Applicant denies all remaining allegations contained in paragraph 9 of the Notice of Opposition.

**First Affirmative Defense**

Applicant is the senior user of the SIMPLERS mark, having used (either through its predecessor-in-interest or its related companies) SIMPLERS in commerce nationwide on a wide range of cosmetic preparation products as early as 1983, decades earlier than the 2009 priority date of Opposer's alleged registration. Accordingly, to the extent a likelihood of confusion exists between Opposer's use of SIMPLY and Applicant's use of SIMPLERS, Opposer is infringing Applicant's senior common law rights to the SIMPLERS mark.

WHEREFORE, Applicant respectfully requests that the Board dismiss this opposition and allow the Application to proceed to registration on the Principal Register.

Dated: December 9, 2014

Respectfully submitted,

/s/ Timothy P. Getzoff

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**ATTORNEYS FOR APPLICANT  
NUTRAMARKS, INC.**

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **ANSWER TO NOTICE OF OPPOSITION** was served on the below-identified counsel for Opposer on December 9, 2014 by the means indicated below:

- U.S. Certified Mail, postage prepaid
- Hand Delivery

Carl Christensen  
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*/s/ Timothy P. Getzoff*

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