

ESTTA Tracking number: **ESTTA667720**

Filing date: **04/20/2015**

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

Proceeding	91221011
Party	Defendant Universal Nutrients, LLC
Correspondence Address	BAXTER W. BANOWSKY BANOWSKY & LEVINE, P.C. 12801 N CENTRAL EXPY STE 1700 DALLAS, TX 75243-1741  bwb@banowsky.com;jlj@banowsky.com
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Date	04/20/2015
Attachments	answer.pdf(44131 bytes )



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

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

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

7. Denied.

8. Denied.

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

10. Denied.

11. Denied.

12. Denied.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

Opposer's claims are barred by laches, waiver, acquiescence and estoppel.

##### **SECOND AFFIRMATIVE DEFENSE**

Any purported rights in the ISO-PLEX mark have been abandoned or otherwise extinguished.

##### **THIRD AFFIRMATIVE DEFENSE**

There has not been any trademark use by Opposer.

## **FORTH AFFIRMATIVE DEFENSE**

Applicant's President was the registrant and owner of the ISO-PLEX Mark, registration no. 2533311 (the '311 Registration'). The 311 Registration issued on January 29, 2002, before Opposer's alleged first use of the ISOFLEX mark. At the time Opposer filed Application Serial No. 77155960 related to the ISOFLEX mark, Applicant's President, Alan Jones, was using the ISO-Plex Mark which was subject to the '311 Registration. While it is true that the '311 registration was cancelled due to Jones' failure to file a Section 8 declaration, that failure was inadvertent and that cancellation did not occur until June 27, 2014. Alan Jones' first use of the ISO-PLEX Mark was July 13, 1999. Applicant claims that it is entitled to a July 13, 1999, priority date based on Alan Jones, its President, being its predecessor-in-interest.

Dated: April 20, 2015

Respectfully submitted,

Banowsky & Levine, P.C.

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**ATTORNEY FOR OPPOSER**

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was served, via email, upon Sean L. Sweeney, Tredecim LLC, PO Box 9739, Portland, ME 04104; [sean@tredecimlaw.com](mailto:sean@tredecimlaw.com) on this 20th day of April, 2014.

By: /Baxter W. Banowsky/  
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