

ESTTA Tracking number: **ESTTA680371**

Filing date: **06/26/2015**

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

Proceeding	91221981
Party	Defendant NutriMost
Correspondence Address	NUTRIMOST 135 BELLA VISTA CT MURRYSVILLE, PA 15668-2621 drrayw@comcast.net
Submission	Answer
Filer's Name	Laura L. Beoglos
Filer's e-mail	docket@sandandsebolt.com, laurab@sandandsebolt.com
Signature	/lauralbeoglos/
Date	06/26/2015
Attachments	2975001US1AO Answer.pdf(274622 bytes)

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

Nutri/System IPHC, Inc.,)	
)	
)	
Opposer,)	
)	
v.)	Opposition No. 91221981
)	(Serial No. 86/421639)
NutriMost LLC,)	
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, NutriMost LLC, by and through counsel, hereby responds to the Notice of Opposition filed on behalf of Opposer, Nutri/System IPHC, Inc., as follows:

1. Applicant is without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and therefore denies the same.

2. Applicant is without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant is without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant admits that it filed an application for registration of the proposed NUTRIMOST mark alleging use in association with “dietary nutritional supplements used for weight loss” and “providing weight loss and nutritional program services” in International Classes 5 and 44 respectively, with said application having Serial No. 86/421,639. Answering further, Applicant denies the remaining allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations contained in paragraph 6 of the Notice of Opposition.

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

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

AFFIRMATIVE DEFENSES

9. Applicant asserts that its mark is visually and phonetically distinct from the Opposer’s marks and therefore the respective marks are not likely to be confused as to the source of origin of the respective goods and services.

10. Applicant asserts that the commercial impression of Opposer’s cited NUTRISYSTEM marks is separate and distinct from that which results from Applicant’s mark, such that confusion as to the source of origin of the respective goods and services is unlikely.

11. Applicant asserts that the “NUTRI” prefix is so commonly used in connection with goods and services related to weight loss, weight management, diet and exercise, that it should be considered weak for purposes of assessing likelihood of confusion.

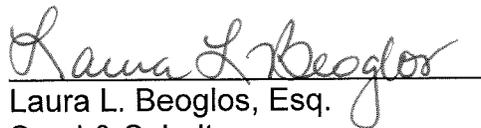
12. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the Opposition.

13. Applicant's mark in its entirety is sufficiently distinctively different from Opposer's marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's goods and services.

14. Applicant's mark, when used on Applicant's goods and services is not likely to cause confusion, or to cause a mistake, or to deceive as to the affiliation, connection or association with Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods and services by Opposer.

WHEREFORE, Applicant respectfully requests that the Opposition be denied.

Respectfully submitted,



Laura L. Beoglos, Esq.
Sand & Sebolt
Aegis Tower, Suite 1100
4940 Munson Street NW
Canton, Ohio 44718
330.244.1174
330.244.1173
laurab@sandandsebolt.com

Attorney for Applicant

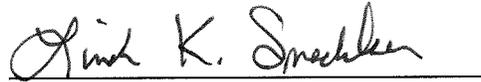
Dated: June 26, 2015
Attorney Docket: 2975001US1AO

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2015, a true copy of the foregoing Applicant's Answer to Notice of Opposition was served via U.S. mail, upon counsel for Opposer:

Timothy J. Szuhaj
Becker Meisel LLC
220 Lake Drive East
Cherry Hill, NJ 08002
tszuhaj@beckermeisel.com
Phone: 856-779-870

Respectfully submitted,

A handwritten signature in cursive script, reading "Linda K. Snedeker", is written over a horizontal line.

Linda K. Snedeker
Assistant to Laura L. Beoglos, Esq.