

For its answer to the numbered paragraphs in the Notice of Opposition, Applicant avers as follows, with the following paragraph numbers corresponding to the numbered paragraphs in the Notice of Opposition:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the averments, and denies same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the averments, and denies same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the averments, and denies same.
4. Applicant admits that it filed U.S. Trademark Application Serial No. 86336621 on July 14, 2014, seeking registration on the Principal Register and that said application was published for opposition in the USPTO's Official Gazette on June 16, 2015. Applicant denies that the descriptions of goods set forth in Paragraph 4 of the Notice of Opposition are the descriptions listed in that application filed on July 14, 2014.
5. Denied.
6. Denied.
7. Denied.

AFFIRMATIVE DEFENSES

Opposer's claims are barred by: laches; estoppel; acquiescence; unclean hands; the absence of a likelihood of confusion; the fact that Opposer's mark NATRALIA is weak and entitled to limited protection; and fraud in obtaining and maintaining U.S. Trademark Registration No. 3052987 (as detailed below).

COUNTERCLAIM FOR CANCELLATION OF
U.S. TRADEMARK REGISTRATION NO. 3052987

On December 23, 2015, all or nearly all of the online resources of the United States Patent & Trademark Office (“USPTO”), including the USPTO’s TESS, TEAS, TSDR, AOTW, ESTTA, TTABVUE systems and databases, were publicly unavailable and inaccessible due to a major power shortage that occurred at USPTO headquarters. As a result of the unavailability of information and documentation due to the power shortage described in Counterclaim Paragraph #3 above, Applicant is currently unable to include herein many of the details supporting this counterclaim, and Applicant intends to amend/supplement this Counterclaim shortly after those USPTO resources become available. In the interim, Applicant avers the following:

1. Applicant is an Australian proprietary limited company and the current owner-of-record for U.S. Trademark Application Serial No. 86336621 for the mark NATRALUS for goods classified in International Classes 3 and 5.

2. Opposer has initiated Opposition No. 91224316 based on Opposer’s alleged registration for, and alleged rights in, the mark NATRALIA, including U.S. Trademark Registration No. 3052987 for the mark NATRALIA for “pharmaceutical preparations, namely, skin care products, namely homeopathic preparations and herbal preparations made from native Australian herbs and essential oils, namely, medicinal creams for skin care to remove blemishes, sun spots and anti-acne cream; medicated sun care preparation; anti-itch ointment; and foot care products, namely homeopathic preparations and herbal preparations made from native Australian herbs and essential oils, namely pharmaceutical preparations for the treatment of foot care fungus” in International Class 5.

3. On information and belief, U.S. Trademark Application Serial No. 78214308 (and hence the resulting U.S. Trademark Registration No. 3052987) is void ab initio because Opposer's predecessor-in-interest, when that application was filed, lacked the requisite bona fide intent to use the mark in U.S. commerce for the goods then specified in that application.

4. On information and belief, U.S. Trademark Application Serial No. 78214308 (and hence the resulting U.S. Trademark Registration No. 3052987) was void ab initio because Opposer's predecessor-in-interest, when filing items with the USPTO in relation to U.S. Trademark Application Serial No. 78214308, lacked the requisite bona fide intent to use the mark in U.S. commerce for the goods then specified in that application.

5. On information and belief, Opposer's predecessor-in-interest made material misstatements to the USPTO in relation to U.S. Trademark Application Serial No. 78214308 with the knowledge that such statements were false and with the intent to deceive the USPTO and attain registration.

6. On information and belief, Opposer made material misstatements to the USPTO in relation to the Declaration of Use & Incontestability under Sections 8 and 15 that was filed for U.S. Trademark Registration No. 3052987 with the knowledge that such statements were false and with the intent to deceive the USPTO and maintain that registration.

7. On information and belief, Opposer is merely a "holding company," does not itself make (and has never itself made) any use of the mark NATRALIA in U.S. commerce for the goods covered in U.S. Trademark Registration No. 3052987, and has abandoned its rights, if any, in and to the mark NATRALIA and U.S. Trademark Registration No. 3052987 on account of such lack of use and/or naked licensing of the NATRALIA trademark.

8. On information and belief, U.S. Trademark Registration No. 3052987 was improperly maintained using specimens that did not show Opposer's use of the mark in U.S. commerce for the covered goods.

9. U.S. Trademark Registration No. 3052987 should be cancelled because that registration (including the application therefor) is void ab initio.

10. U.S. Trademark Registration No. 3052987 should be cancelled because of Opposer's and Opposer's predecessor-in-interest's above-referenced commissions of fraud on the USPTO in obtaining and maintaining that U.S. Trademark Registration No. 3052987.

11. U.S. Trademark Registration No. 3052987 should be cancelled due to Opponent's abandonment of the mark.

WHEREFORE Applicant prays that:

1. the Board find that there is no likelihood of confusion between the mark NATRALIA and the mark NATRALUS when used in connection with Opposer's and Applicant's respective goods;

2. the Board dismiss Opposition No. 91224316 with prejudice and pass U.S. Trademark Application Ser. No. 86336621 to the allowance stage; and

3. the Board cancel Opposer's U.S. Trademark Registration No. 3052987.

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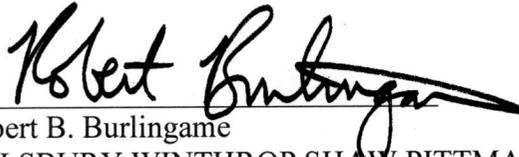
For the official fee filing due for this counterclaim against U.S. Trademark Registration No. 3052987, please change that fee to USPTO Deposit Account No. 033975 (and please reference number 029457-0000003). Thank you.

Dated: December 23, 2015

Respectfully Submitted,

Natralus Australia Pty Ltd

By:



Robert B. Burlingame

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Opposition No. 91224316

PROOF OF SERVICE BY FIRST-CLASS MAIL

I, Robert B. Burlingame, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in San Francisco, CA.
2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111. My mailing address is P.O. Box 2824, San Francisco, CA 94126-2824.
3. On December 23, 2015, I served a true copy of the attached document titled exactly "Answer & Counterclaim to Notice of Opposition" by placing it in an addressed and sealed envelope and transmitting it by first-class mail, to the following:

Ben S. White
IP Legal Advisors, P.C.
4445 Eastgate Mall, Suite 200
San Diego, CA 92121

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of December, 2015, at San Ramon, CA.


Robert B. Burlingame