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

Proceeding	91226365
Party	Defendant Muses Labs, Inc.
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Submission	Answer
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Date	03/24/2016
Attachments	MUSE.21001OPP - Mend Opposition - Answer.pdf(1575828 bytes)

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

In the matter of Trademark
Application Serial No. 86/428,361
Filing Date: October 20, 2014
Mark: MEND
Published for Opposition: October 20, 2015

DR. DALE BREDESEN, Opposer, v. MUSES LABS, INC., Applicant.	)	Opposition No. 91226365

ANSWER TO NOTICE OF OPPOSITION

Muses Labs, Inc., ("Applicant"), by and through its undersigned counsel, hereby sets forth its Answer to the Notice of Opposition filed by Dr. Dale Bredesen ("Opposer") in the above-captioned proceeding as follows:

With respect to the allegations in the unnumbered portion of the Notice of Opposition, Applicant responds that it does not believe any answer or other response is necessary. To the extent that a response is required, Applicant is without sufficient knowledge or information to form a belief as to the truth of such allegations, and therefore, denies them.

With respect to the numbered paragraphs of the Notice of Opposition, Applicant responds as follows:

1. With respect to the allegations of Paragraph 1 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of such allegations and therefore denies them.

2. With respect to Paragraph 2 of the Notice of Opposition, Applicant admits to the factual information with respect to Applicant's state of incorporation.

3. With respect to the allegations of Paragraph 3 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of such allegations and therefore denies them.

4. With respect to the allegations of Paragraph 4 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of such allegations and therefore denies them.

5. With respect to the allegations of Paragraph 5 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of such allegations and therefore denies them.

6. With respect to the allegations of Paragraph 6 of the Notice of Opposition, Muses Labs, Inc. and Dr. Bredesen entered into a Consulting Agreement with an Effective Date of June 1, 2014 whereby Muses Labs engaged Dr. Bredesen as its Chief Medical Officer, in exchange for, among other things Dr. Bredesen's assent to a Proprietary Information Agreement, whereby Dr. Bredesen assigned certain proprietary rights, as defined in the agreement, to Muses Labs. Applicant further admits that one aspect of its business includes developing software to deliver data-driven personalize therapy to Alzheimer's patients all of his right title and interest in and studying the effectiveness of this approach. To the extent not expressly admitted above, Applicant denies the remaining allegations of Paragraph 6.

7. With respect to the allegations of Paragraph 7 of the Notice of Opposition, Applicant admits that Dr. Bredesen sent a letter on September 16, 2016 to Muses Labs purporting to terminate the Consulting Agreement between Muses Labs and Dr. Bredesen. Except as expressly admitted above, Applicant denies the allegations of Paragraph 7.

8. With respect to the allegations set forth in Paragraph 8, Applicant admits the factual information regarding Applicant's trademark application for its MEND mark.

9. With respect to the allegations of Paragraph 9 of the Notice of Opposition, Applicant admits that the filing date of Applicant's trademark application for Applicant's MEND mark is October 20, 2014. Applicant denies the remaining allegations in Paragraph 9.

10. With respect to the allegations of Paragraph 10 of the Notice of Opposition, Applicant admits that it filed an Amendment to Allege Use of the MEND trademark on February 25, 2015 that included claims of first use anywhere at least as early as October 9, 2014 and first use in commerce at least as early as December 3, 2014 and submitted specimens demonstrating Applicant's use of the mark. Except as expressly admitted above, Applicant denies the allegations of Paragraph 10.

11. With respect to the allegations of Paragraph 11 of the Notice of Opposition, Applicant denies the same.

12. With respect to the allegations of Paragraph 12 of the Notice of Opposition, Applicant denies the same.

13. With respect to the allegations of Paragraph 13 of the Notice of Opposition, Applicant admits that it has not submitted any of the referenced documents as the documents are not a requirement to secure Applicant's protection for its MEND mark.

14. With respect to the allegations in Paragraph 14, Applicant admits that Dr. Bredesen sent a letter to Applicant on September 16, 2015, but denies all substantive statements, claims and allegations made therein.

15. With respect to the allegations in Paragraph 15, Applicant admits that it has not withdrawn its application to register its MEND mark. Applicant denies the remaining allegations in Paragraph 15.

16. With respect to the allegations in Paragraph 16, Applicant denies all allegations in Paragraph 16.

17. With respect to the allegations in Paragraph 17, Applicant denies all allegations in Paragraph 17.

18. With respect to the allegations in Paragraph 18, Applicant denies all allegations in Paragraph 18.

19. Applicant denies that Dr. Bredesen has a MEND trademark. Further, the allegations in Paragraph 19 call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant denies all allegations in Paragraph 19.

20. Applicant denies that Dr. Bredesen has a MEND trademark and denies that Dr. Bredesen makes use of the mark in connection with any goods or services. Further, the allegations in Paragraph 20 call for a legal conclusion and therefore no response is required. However, to the extent a response is required, Applicant denies all allegations in Paragraph 20.

21. The allegations in Paragraph 21 call for a legal conclusion and therefore no response is required. However, to the extent a response is required, Applicant denies all allegations in Paragraph 21.

22. With respect to the allegations in Paragraph 22, Applicant denies all allegations in Paragraph 22.

AFFIRMATIVE DEFENSES

1. Applicant is informed and believes that the Notice of Opposition and the claims stated therein fail to state a claim upon which relief may be granted.

2. Dr. Bredesen signed a Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement on June 1, 2014 whereby he assigned certain proprietary rights, as defined in the agreement, to Muses Labs.

3. Applicant is informed and believes and thereon alleges that the Notice of Opposition is barred by the doctrine of acquiescence, waiver, consent, laches or estoppel.

WHEREFORE, Applicant prays for judgment in its favor with respect to this Notice of Opposition and that the Notice of Opposition be dismissed in its entirety with prejudice. Applicant reserves the right to raise any and all additional affirmative defenses that may be warranted by evidence disclosed during the course of discovery.

Respectfully submitted, this 24 day of March, 2016

By: _____

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served via First Class U.S. Mail, postage prepaid to Opposer:

Dr. Dale Bredesen
c/o Buck Institute
8001 Redwood Blvd.
Novato, CA 94945

and counsel for Opposer:

Eleanor M. Yost
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901 New York Avenue NW
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this 24 day of March, 2016.

Trevor P. Schmidt
Attorney for Applicant