

ESTTA Tracking number: **ESTTA442420**

Filing date: **11/22/2011**

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

Proceeding	92054493
Party	Defendant SiaMack Alavi
Correspondence Address	SIAMACK ALAVI 2518 ST IGNATIUS COURT ORLANDO, FL 32835 UNITED STATES sluther@addmg.com,odsierra@addmg.com
Submission	Answer
Filer's Name	Stephen H. Luther
Filer's e-mail	sluther@addmg.com
Signature	/Stephen H. Luther/
Date	11/22/2011
Attachments	Answer to Petition.pdf (4 pages)(41714 bytes)

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

LABORATORY CORPORATION)	Cancellation No. 92054493
OF AMERICA HOLDINGS)	Registration No. 3657902
)	
Petitioner,)	
)	
v.)	
)	
)	
SIA-MACK ALAVI)	
and DANIEL DAVIDSON)	
)	
)	
Registrants.)	

REGISTRANT, SIA-MACK ALAVI'S
ANSWER AND AFFIRMATIVE DEFENSES

Registrant, SIA-MACK ALAVI, through his undersigned counsel, hereby submits his answer to the Petition for Cancellation, as follows:

1. Registrant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Petition for Cancellation, and based upon such lack of knowledge or information hereby denies same.
2. Registrant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 2 of the Petition for Cancellation, and based upon such lack of knowledge or information hereby denies same.
3. Registrant denies the allegations contained in Paragraph 3 of the Petition for Cancellation asserting that Petitioner has established trademark rights in the “fields of health and medicine” generally. Registrant is without knowledge or information sufficient to admit or deny

the remaining allegations contained in Paragraph 3 of the Petition for Cancellation, and based upon such lack of knowledge or information hereby denies same.

4. Registrant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 4 of the Petition for Cancellation, and based upon such lack of knowledge or information hereby denies same.

5. The documents attached at Exhibits 1 and 2 speak for themselves.

6. Registrant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Petition for Cancellation, and based upon such lack of knowledge or information hereby denies same.

7. Registrant admits it is the owner of U.S. Trademark Registration No. 3, 657,902 for “dietary and nutritional supplements” on the Principal Register, and that Petitioner is seeking to cancel this registration. Petitioner denies the remaining allegations contained in Paragraph 7 of the Petition for Cancellation.

8. Registrant denies the allegations contained in Paragraph 8 of the Petition for Cancellation.

9. Registrant denies the allegations contained in Paragraph 9 of the Petition for Cancellation.

10. Registrant denies the allegations contained in Paragraph 10 of the Petition for Cancellation.

11. Registrant denies the allegations contained in Paragraph 11 of the Petition for Cancellation.

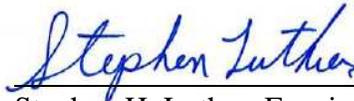
Registrant denies that Petitioner is entitled to the relief sought in its prayer for relief.

AFFIRMATIVE DEFENSES

1. Petitioner's marks are either generic or merely descriptive of Petitioner's services, have not acquired secondary meaning generally or in Registrant's field of use, and are therefore invalid and unenforceable.
2. Petitioner's claim is barred by the doctrines of waiver, acquiescence, laches, or estoppel.
3. Petitioner's marks are unenforceable because of extensive third-party use.
4. Registrant has priority of use and trademark rights for its trademark in its field of use.

WHEREFORE, Registrant prays that this Petition for Cancellation be dismissed.

Respectfully submitted,



Stephen H. Luther, Esquire
**Allen, Dyer, Doppelt,
Milbrath & Gilchrist, P. A.**
255 South Orange Avenue
Suite 1401
Orlando, Florida 32801
Phone: 407 841-2330
Fax: 407 841-2343
Email: sluther@addmg.com

Attorneys for Registrant Sia-Mack Alavi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U. S. Mail on November 22, 2011, to William M. Bryner, Kilpatrick, Townsend & Stockton, LLP, 101 West Fourth Street, Winston-Salem, NC 27101.



Stephen H. Luther