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

Proceeding	92057091
Party	Defendant Pure Vitamins and Natural Supplements DBA Vigor-25
Correspondence Address	PURE VITAMINS AND NATURAL SUPPLEMENTS 1708 E NORTH BAY ST TAMPA, FL 33610 UNITED STATES drken@purevitaminsusa.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers, Esq.
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	07/01/2013
Attachments	motion and answer.pdf(103891 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the Matter of Reg. No. 4,261,122
For the mark CONTROL

Nanette Carley d/b/a Bioceuticals,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92057091
	:	
Pure Vitamins and Natural Supplements	:	
d/b/a Vigor-25,	:	
	:	
Registrant.	:	

MOTION FOR LEAVE TO FILE ANSWER LATE

COMES NOW the Registrant Pure Vitamins and Natural Supplements d/b/a Vigor-25 (hereinafter “Registrant”), by counsel, submits the foregoing, pursuant to TBMP § 312.02 with good cause shown respectfully requests that the Board accept the Motion For Leave to file the Answer late in the instant case and accept the attached Answer and Grounds of Defense in this matter. In support thereof Registrant states as follows:

STATEMENT OF THE CASE

1. On or about April 23, 2013 Nanette Carley d/b/a Bioceuticals (“Petitioner”) instituted the instant proceeding against the registration of Registrant’s CONTROL mark.
2. Registrant’s deadline to file its Answer and Grounds of Defense was June 2, 2013.
3. Registrant has been seeking the advice of counsel and has now had the opportunity to hire counsel.

RESPONSE

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. TBMP § 312.02.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02.

In the instant case Registrant inadvertently lost track of the deadline to file an answer in the instant matter as they were seeking the advice of and to hire counsel, and was not aware that the the deadline had already passed by one day. Moreover, Registrant has, only recently, been able to secure counsel to defend the matter at hand. As such, it is submitted that good cause be established in this matter as to why the default should be set aside on the basis of Registrant's inadvertent lapse in not having the answer filed in a timely manner. Moreover, it is submitted that the Petitioner would not be prejudiced whatsoever by the instant acceptance of the Answer at issue by the Board as the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard. Moreover, Registrant inadvertently filed its initial Motion for Leave to File Answer Late and Answer and Grounds of Defense under related Cancellation Proceeding 92057107.

In regard to a meritorious defense, for the purposes of completeness the Registrant has attached an Answer which it moves the Board to accept as late given the good cause shown herein. See Exhibit A.

WHEREFORE for good cause considered, the Registrant, by counsel, respectfully requests that the Board set aside the Notice of Default in the instant case and accept the attached Answer and Grounds of Defense in this matter.

Respectfully submitted this 1st day of July, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Registrant

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92057091
	:	
Pure Vitamins and Natural Supplements	:	
d/b/a Vigor-25	:	
	:	
Registrant.	:	

ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Registrant, Pure Vitamins and Natural Supplements d/b/a Vigor-25 (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, and files its Answer and Grounds of Defense to the Petition for Cancellation and in response to Petitioner’s allegations states as follows:

ANSWER

Registrant is without knowledge of the allegations set forth in the Introductory Paragraph of the Petition for Cancellation and therefore denies the same. In response to the specifically enumerated allegations, the Registrant states as follows:

1. Registrant is without knowledge of the allegations set forth in paragraph 1 of the Petition for Cancellation and therefore denies the same.

2. Registrant admits to the allegations set forth in paragraph 2 of the Petition for Cancellation.

3. Registrant is without knowledge of the allegations set forth in paragraph 3 of the Petition for Cancellation and therefore denies the same.

4. Registrant denies the allegations set forth in paragraph 4 of the Petition for Cancellation as phrased and demands strict proof thereof.

5. Registrant admits to the allegations set forth in paragraph 5 of the Petition for Cancellation.

6. Registrant admits to the allegations set forth in paragraph 6 of the Petition for Cancellation.

7. Registrant denies the allegations set forth in paragraph 7 of the Petition for Cancellation as phrased and demands strict proof thereof.

8. Registrant denies the allegations set forth in paragraph 8 of the Petition for Cancellation and demands strict proof thereof.

9. Registrant is without knowledge of the allegations set forth in paragraph 9 of the Petition for Cancellation and therefore denies the same.

10. Registrant is without knowledge of the allegations set forth in paragraph 10 of the Petition for Cancellation and therefore denies the same.

11. Registrant denies the allegations set forth in paragraph 11 of the Petition for Cancellation and demands strict proof thereof.

12. Registrant denies the allegations set forth in paragraph 12 of the Petition for Cancellation and demands strict proof thereof.

13. Registrant denies the allegations set forth in paragraph 13 of the Petition for Cancellation and demands strict proof thereof.

14. Registrant denies the allegations set forth in paragraph 14 of the Petition for Cancellation and demands strict proof thereof.

15. Registrant denies the allegations set forth in paragraph 15 of the Petition for Cancellation and demands strict proof thereof.

16. Registrant denies the allegations set forth in paragraph 16 of the Petition for Cancellation and demands strict proof thereof.

17. Registrant is without knowledge of the allegations set forth in paragraph 17 of the Petition for Cancellation and therefore denies the same.

18. Registrant denies the allegations set forth in paragraph 18 of the Petition for Cancellation and demands strict proof thereof.

19. Registrant denies the allegations set forth in paragraph 19 of the Petition for Cancellation and demands strict proof thereof.

Registrant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

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

Respectfully submitted this 1st of July 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Counsel for Registrant

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	:	
Pure Vitamins and Natural Supplements	:	
d/b/a Vigor-25	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleadings this 1st day of July 2013, to be served, via first class mail, postage prepaid, upon:

JOHN FLUMAN III
BRACEWELL & GIULIANI LLP
711 LOUISIANA ST, STE 2300
HOUSTON, TX 77002

/Matthew H. Swyers/
Matthew H. Swyers