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

| | |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 92059915 |
| Party | Plaintiff GE Nutrients, Inc. |
| Correspondence Address | RYAN M KAISER AMIN TALATI LLC 55 W MONROE STREET, SUITE 3400 CHICAGO, IL 60603 UNITED STATES ryan@amintalati.com,saira@amintalati.com,ashley@amintalati.com |
| Submission | Answer to Counterclaim |
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| Signature | /s/ Ryan M. Kaiser |
| Date | 12/05/2014 |
| Attachments | Answer to Counterclaims.pdf(61099 bytes) |

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

In the Matter of Trademark Registration No.: 4,302,581
For the Mark: TESTOGEN-XR
Date Registered: March 12, 2013

| | | |
|---------------------|---|-----------------------|
| GE NUTRIENTS, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | Petition No. 92059915 |
| V. |) | |
| |) | |
| CA IP HOLDINGS, LLC |) | |
| |) | |
| Registrant. |) | |
| |) | |

**PETITIONER’S ANSWER TO REGISTRANT’S COUNTERCLAIMS TO CANCEL
PETITIONER’S REGISTRATION**

GE Nutrients, Inc. (“Petitioner” and “Counter-defendant”), by and through its undersigned counsel, hereby submits this Answer in response to CA IP Holding’s, LLC (“Registrant” and Counterclaimant) Counterclaims to Cancel Petitioner’s Registration as follows:

25. Petitioner is unable to make an answer to Paragraph 25 of the Counterclaims to Cancel because it is simply a re-allegation of every allegation contained in the foregoing paragraphs which were answers to the Petition to Cancel and Registrant’s Counterclaims. To the extent an answer is required, Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of Registrants’ Counterclaims to Cancel.

26. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of Registrant’s Counterclaims to Cancel.

27. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of Registrant's Counterclaims to Cancel.

28. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations in contained in Paragraph 28 of Registrant's Counterclaims to Cancel.

29. Petitioner admits the allegations contained in Paragraph 29 of Registrant's Counterclaims to Cancel.

30. Petitioner admits the allegations contained in Paragraph 30 of Registrant's Counterclaims to Cancel.

31. Petitioner admits the allegations contained in Paragraph 31 of Registrant's Counterclaims to Cancel.

32. Petitioner admits the allegations contained in Paragraph 32 of Registrant's Counterclaims to Cancel.

33. Petitioner admits it responded to the USPTO Office Action on July 11, 2006 and stated that "the mark TESTOFEN has no significance in the relevant trade or industry or as applied to the goods/services." Petitioner admits that it submitted a specimen of use to the USPTO on August 13, 2007. Petitioner denies the remaining allegations contained in Paragraph 33.

34. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of Registrant's Counterclaims to Cancel because it contains no allegations and only an image. To the extent that an answer is required, Petitioner

admits that the image contained in paragraph 34 is the specimen it submitted to the USPTO on August 13, 2007.

35. Petitioner admits that in response to the January 13, 2006 Office Action, it responded that the “mark TESTOFEN has no significance in the relevant trade or industry or as applied to the goods/services.” Petitioner denies the remaining allegations contained in Paragraph 35.

36. Petitioner admits that on November, 22, 2006 it filed an amendment to the identification of the goods from “dietary supplements” to “dietary supplements sold and distributed over the counter in class 5.” Petitioner denies the remaining allegations contained in Paragraph 36.

37. Petitioner admits that on August 13, 2007, it filed a Statement of Use stating that the mark TESTOFEN was first used as early as June 30, 2005, as “dietary supplements sold and distributed over the counter.” Petitioner admits that within the Statement of Use, Petitioner submitted a sworn declaration to the USPTO that Petitioner was warned that “willful false statements and the like are punishable by fine or imprisonment, or both under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, and declared that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.” Petitioner denies the remaining allegations contained in Paragraph 37.

38. Petitioner admits that on May 16, 2013, it filed a Combined Declaration of Use and Incontestability under Sections 8 & 15 declaring that “the mark is in use in commerce on or

in connection with all of the goods or services listed in the existing registration for this specific class: dietary supplements sold and distributed over the counter; and the mark has been continuously used in commerce for five (5) consecutive years after the date of registration....and is still in use in commerce on or in connection with all goods or services listed in the existing registration for this class.” Petitioner denies the remaining allegations contained in Paragraph 38.

39. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

40. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of Registrant’s Counterclaims to Cancel.

41. Petitioner denies the allegations contained in Paragraph 41 of Registrant’s Counterclaims to Cancel.

42. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

43. Petitioner denies the allegations contained in Paragraph 43 of Registrant’s Counterclaims to Cancel.

44. Petitioner denies the allegations contained in Paragraph 44 of Registrant’s Counterclaims to Cancel.

45. Petitioner denies the allegations contained in Paragraph 45 of Registrant’s Counterclaims to Cancel.

46. Petitioner denies the allegations contained in Paragraph 46 of Registrant's Counterclaims to Cancel.

47. Petitioner denies the allegations contained in Paragraph 47 of Registrant's Counterclaims to Cancel.

48. Petitioner denies the allegations contained in Paragraph 48 of Registrant's Counterclaims to Cancel.

49. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

50. Petitioner admits that it represented that TESTOFEN "has no significance in the relevant trade or industry or as applied to the goods/services." Petitioner denies the remaining allegations contained in Paragraph 50 of Registrant's Counterclaims to Cancel.

51. Petitioner denies the allegations contained in Paragraph 51 of Registrant's Counterclaims to Cancel.

52. Petitioner denies the allegations contained in Paragraph 52 of Registrant's Counterclaims to Cancel.

53. Petitioner denies the allegations contained in Paragraph 53 of Registrant's Counterclaims to Cancel.

54. Petitioner denies the allegations contained in Paragraph 54 of Registrant's Counterclaims to Cancel.

55. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

56. Petitioner admits that it represented that TESTOFEN “has no significance in the relevant trade or industry or as applied to the goods/services.” Petitioner denies the remaining allegations contained in Paragraph 56 of Registrant’s Counterclaims to Cancel.

57. Petitioner denies the allegations contained in Paragraph 57 of Registrant’s Counterclaims to Cancel.

58. Petitioner denies the allegations contained in Paragraph 58 of Registrant’s Counterclaims to Cancel.

59. Petitioner denies the allegations contained in Paragraph 59 of Registrant’s Counterclaims to Cancel.

60. Petitioner denies the allegations contained in Paragraph 60 of Registrant’s Counterclaims to Cancel.

61. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

62. Petitioner denies the allegations contained in Paragraph 62 of Registrant’s Counterclaims to Cancel.

63. Petitioner repeats and realleges, as if fully set forth herein, each and every answer to the allegations contained in the foregoing paragraphs.

64. Petitioner denies the allegations contained in Paragraph 64 of Registrant's Counterclaims to Cancel.

65. Petitioner denies that Registrant is entitled to this relief, or any relief thereof, and denies the allegations therein.

WHEREFORE, Petitioner denies that Registrant is entitled to any relief and requests that the Board dismiss the Registrant's Counterclaim to Cancel Petitioner's Registration.

Dated: December 5, 2014

Respectfully submitted:

/s/ Ryan M. Kaiser
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December 2014, the forgoing **Petitioner's Answer to Registrant's Counterclaim to Cancel Petitioner's Registration** was served, by mailing same by US First Class mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Scott D. Smiley
The Concept Law Group, P.A.
Museum Plaza
200 South Andrews Avenue, Suite 100
Fort Lauderdale, FL 33301

CA IP Holdings, LLC
2041 High Ridge Road
Suite B
Boynton Beach, Florida 33426

/s/ Saira J. Alikhan
Saira J. Alikhan

CERTIFICATE OF TRANSMISSION

I, Saira J. Alikhan, hereby certify that the forgoing **Petitioner's Answer to Registrant's Counterclaims to Cancel Petitioner's Registration** is being electronically transmitted to the United States Patent and Trademark Office today, December 5, 2014.

Dated: December 5, 2014

/s/ Saira J. Alikhan _____
Saira J. Alikhan