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

Proceeding	92060342
Party	Defendant Celebrus, LLC dba ARIIX
Correspondence Address	CELEBRUS LLC 563 WEST 500 SOUTH, SUITE 340 BOUNTIFUL, UT 84010 UNITED STATES
Submission	Answer
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Date	12/19/2014
Attachments	2014-12-19 - Omega-Q - Answer.pdf(2550910 bytes)

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

Healthy Directions, LLC, Petitioner v. Celebrus, LLC dba ARIIX Registrant.	Cancellation No. 92060342 Registration No. 4570100 OMEGA-Q

ANSWER

Registrant, Celebrus, LLC dba ARIIX ("Registrant"), owner of U.S. Trademark Registration No. 4570100 for the mark "OMEGA-Q," states the following as its Answer to the Petition for Cancellation filed by Healthy Directions, LLC ("Petitioner"):

Answering the allegation set forth in the introduction of the Petition that states that Petitioner "believes that it is damaged by Registration No. 4570100," Registrant denies this allegation. Strict proof is demanded at trial.

1. Registrant denies knowledge and information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 1, and therefore, denies the allegations.

2. Registrant denies knowledge and information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 2, and therefore, denies the allegations.

3. Registrant denies knowledge and information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 3, and therefore, denies the allegations.

4. Answering Paragraph 4 of the Petition, Registrant admits that Petitioner is listed as the owner for U.S. Registration No. 3295413 for the mark "Omega Q Plus" on the USPTO TESS database, and the registration covers "nutritional supplements" with a disclaimer that "no claim is made to the exclusive right to use 'Omega Q' apart from the mark as shown." Registrant denies the remaining allegations in Paragraph 4. All allegations, unless specifically admitted, are denied.

5. Answering Paragraph 5 of the Petition, Registrant admits that, as set forth in the USPTO TESS database, the filing date for Petitioner's U.S. Registration No. 3295413 is listed as December 30, 2005. Registrant denies the remaining allegations in Paragraph 5. All allegations, unless specifically admitted, are denied.

6. Answering Paragraph 6 of the Petition, Registrant admits that, as set forth in the USPTO TESS database, the registration date for Registration No. 3295413 is listed as September 18, 2007. Registrant denies the remaining allegations in Paragraph 6. All allegations, unless specifically admitted, are denied.

7. Answering Paragraph 7 of the Petition, Registrant admits that, as set forth in the USPTO TESS database, the date of first use alleged by Petitioner for Registration No. 3295413 is listed as March 5, 2007. Registrant denies the remaining allegations in Paragraph 7. All allegations, unless specifically admitted, are denied.

8. Registrant admits the allegations contained in Paragraph 8.

9. Registrant admits the allegations contained in Paragraph 9.

10. Registrant admits the allegations contained in Paragraph 10.

11. Registrant admits the allegations contained in Paragraph 11.

12. Registrant denies knowledge and information sufficient to form a belief as to the truth and accuracy of the allegations contained in Paragraph 12, and therefore, denies the allegations.

13. Answering Paragraph 13 of the Petition, Registrant admits that, as set forth in the USPTO TESS database, the goods listed in Registrant's registration are "nutritional supplements" and the goods listed in Petitioners registration are "nutritional supplements." Registrant denies the remaining allegations in Paragraph 13. All allegations, unless specifically admitted, are denied.

14. Registrant denies the allegations contained in Paragraph 14.

15. Registrant denies the allegations contained in Paragraph 15.

16. Registrant denies the allegations contained in Paragraph 16.

17. Registrant denies the allegations contained in Paragraph 17.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Each of the purported claims for relief that Petitioner alleges in its Petition is barred or limited, in whole or in part, because each such claim does not state facts sufficient to constitute a cause of action under applicable law.

Second Affirmative Defense

As a result of Registrant's continuous use of its mark since the time of Registrant's adoption thereof, the mark has developed significant goodwill among the consuming public and consumer acceptance of the product offered by Registrant in conjunction with the mark. Such goodwill and widespread usage has caused the mark to acquire distinctiveness with respect to Registrant, and caused the mark to become a valuable asset of Registrant.

Third Affirmative Defense

There is no likelihood of confusion, mistake, or deception because, *inter alia*, the mark and the alleged trademark of the Petitioner are not confusingly similar, and the Registrant's mark and the Petitioner's mark travel in different trade channels.

Fourth Affirmative Defense

Registrant has been using its mark and developing consumer recognition and goodwill therein since at least July 4, 2011, such use being open and notorious. During this time, Petitioner failed to take meaningful action to assert the claims on which it bases this Cancellation. Petitioner's claims are consequently barred by the doctrines of laches, acquiescence, and estoppel.

Fifth Affirmative Defense

Registrant hereby gives notice that it may rely on any other defenses that may become available to appear proper during discovery, and herby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Registrant requests that the Trademark Trial and Appeal Board dismiss the Petition for Cancellation and grant all other appropriate relief to Registrant as it deems just.

Dated: December 19, 2014

Tyler B. Jones
Attorney for Registrant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer was served on Petitioner's attorney of record at Petitioner's attorney's address of record, on the 19th day of December, 2014, by first-class mail, and addressed as follows:

Mark B. Harrison
Rebecca Liebowitz
Halle Markus
Jeremy Klass
VENABLE
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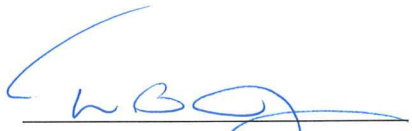

Tyler B. Jones
Attorney for Registrant