

ESTTA Tracking number: **ESTTA692720**

Filing date: **08/31/2015**

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

Proceeding	92061862
Party	Defendant Nutrex Research, Inc.
Correspondence Address	NUTREX RESEARCH INC SUITE 1001, 5707 DOT COM COURT OVIDO, FL 32765 UNITED STATES
Submission	Answer
Filer's Name	Ava K. Doppelt
Filer's e-mail	adoppelt@addmg.com, spayne@addmg.com, mgarcia@addmg.com
Signature	/Ava K. Doppelt/
Date	08/31/2015
Attachments	Answer and Affirmative Defenses.pdf(23564 bytes )



2. Admitted.

3. Respondent denies that Petitioner is the prior user of the mark NUTREX for nutritional supplements. Respondent is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 3 of the Petition, and based upon such lack of knowledge or information it hereby denies same. Respondent asserts that the Affidavit attached as Exhibit 1 is improper, and denies that any answer to the Affidavit is required.

4. Respondent is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 4 of the Petition, and based upon such lack of knowledge or information it hereby denies same. Copies of records from the United States Patent and Trademark Office database, which are attached to the Petition, speak for themselves as to their contents.

5. No response required to Paragraph 5 of the Petition, but Respondent avers that it has been in existence using its NUTREX marks since 2002, that Petitioner knew of its existence, that Petitioner is suffering no harm or damage as a result of such existence and use, that it never has in the past nor will it in the future suffer any harm or damage, and that in any event, Petitioner has waited too long to assert any cancellation claims against Respondent.

6. No response required to Paragraph 6 of the Petition, but Respondent denies that Petitioner is suffering any damage as a result of Respondent's registrations.

7. Respondent denies the allegations contained in Paragraph 7 of the Petition. Respondent is without knowledge or information sufficient to admit or deny what Petitioner says it intends to do.

8. Denied.

9. Denied. Respondent asserts that the Affidavit attached as Exhibit 3 is improper, and denies that any answer to the Affidavit is required.

10. No response is required to Paragraph 10 of the Petition, but Respondent denies that its registrations should be cancelled.

11. Respondent denies each and every allegation not expressly admitted herein.

### **AFFIRMATIVE DEFENSES**

1. Petitioner has not alleged facts sufficient to state a claim for the cancellation of Respondent's registrations.

2. By its reticence and Respondent's reliance thereon, Petitioner has waived any rights it may have had to attempt to cancel Respondent's registrations.

3. By its reticence and Respondent's reliance thereon, Petitioner is estopped from attempting to cancel Respondent's registrations.

4. By its reticence and Respondent's reliance thereon, Petitioner is barred by laches from attempting to cancel Respondent's registrations.

5. By its reticence and Respondent's reliance thereon, Petitioner is barred by acquiescence from attempting to cancel Respondent's registrations.

6. There is no likelihood of confusion between Petitioner's and Respondent's trademarks.

7. Petitioner and Respondent do not promote or sell the same or similar products.

8. Petitioner does not have priority of use over Respondent throughout the United States.

9. Petitioner is barred by the doctrine of unclean hands from attempting to cancel Respondent's registrations.

WHEREFORE, Respondent respectfully requests that the Cancellation be dismissed with prejudice, and that its Registrations remain registered on the Principal Register.

Dated: August 31, 2015

Respectfully submitted,

/Ava K. Doppelt/

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**Certificate of Service**

The undersigned hereby certifies that on August 31, 2015, a copy of the foregoing was served via First Class mail and email on the following:

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/Ava K. Doppelt/