

ESTTA Tracking number: **ESTTA3279**

Filing date: **11/17/2003**

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

Proceeding	91155077
Party	Defendant JOAR OPHEIM Opheim, Joar 3040 Valencia Ave. Aptos, CA 95003
Correspondence Address	JOAR OPHEIM NORDIC NATURALS 5A HANGER WAY WATSONVILLE, CA 95076
Submission	Answer
Filer's Name	Howard E. Lebowitz
Filer's e-mail	hlebowitz@pacbell.net
Signature	/Howard E. Lebowitz/
Date	11/17/2003
Attachments	Answer to Notice of Opposition.pdf (4 pages)

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

Genetics Institute, LLC)
 v.)
Joar Opheim)
)
Opposition No.: 91155077)

ANSWER TO NOTICE OF OPPOSITION

The correct identification of the Applicant is: “Joar Opheim and Michele Opheim, a partnership DBA: Nordic Naturals”. This entity is consistent with the entity identified in the application as filed but which was incorrectly amended during prosecution. A motion to amend and correct the error has been filed concurrently herewith. Applicant’s current address is 5A Hangar Way, Watsonville, California 95076. Opposer, Genetics Institute, LLC, has filed Notice of Opposition, and the Applicant presents its Answer as follows:

First Defense

1. Applicant’s proper identity is as indicated above. Applicant otherwise admits as to the remaining facts of the first paragraph.

2. Applicant does not have sufficient information of its own knowledge to admit or deny paragraph 2.
3. Applicant does not have sufficient information of its own knowledge to admit or deny paragraph 3.
4. Applicant admits to paragraph 4.
5. Applicant denies paragraph 5 in its entirety. By way of amplification, Applicant argues that there is not a likelihood of confusion, mistake, or deception with respect to Opposer or its trademark, because, in addition to other reasons, the proposed mark is distinctive in sight, sound, and meaning from Opposer's mark, the Applicant's goods are not competitive with Opposer's mark and are marketed to a different class of purchasers (Opposer's specialized prescription cancer treatment drug vs. Nutritional and Dietary Supplement), and Applicant manufactures and sells a distinctive line of other dietary and supplements which are well known and marketed throughout the United States.

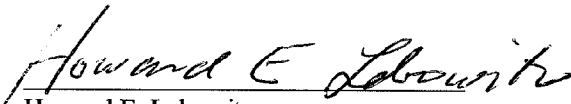
Alternative Defense

With regard to paragraphs 1 and 5 of the Notice of Opposition, while as previously stated Applicant believes there is no likelihood of confusion, mistake, or deception with respect to the proposed mark as stated in the Application, Applicant in actuality only intends to use the NOROMEGA mark for a Nutritional and Dietary Supplement based on Fish Oil. Even if the Board ultimately finds that the Opposer is entitled to judgement with respect to Applicant's goods as broadly defined, Applicant should be entitled to register its mark as actually intended for use.

WHEREFORE, Applicant believes that it is entitled to registration of its NOROMEGA mark, it requests granting of its Application as originally stated, or in the alternative limited to the description of Applicant's goods as actually intended for use.

This Answer is being filed electronically on the ESTTA system.

Applicant has appointed the undersigned attorney Howard E. Lebowitz, a member of the State Bar of California (Bar Number 223,962), to represent it in the above identified opposition and for further prosecution of the Application Serial No. 78/082,909, and to conduct all business with the PTO with respect to the opposition and the Application, and to receive all official communications relating to the same. It is requested that all communications be addressed to Howard E. Lebowitz, 19682 Hesperian Blvd., Suite 208, Hayward, CA 94541.

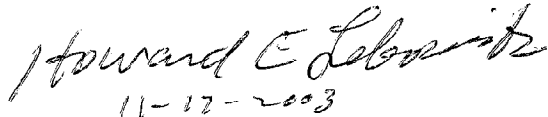


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Dated: November ¹⁷, 2003

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Answer has been served on Egon E. Berg, Attorney for Wyeth, by mailing said copy on Nov. 17, 2003 by Express Mail Post Office to Addressee to Egon E. Berg, Esquire, Wyeth, Five Giralda Farms, Madison, New Jersey 07940.



11-17-2003