

TTAB

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

05-28-2003
U.S. Patent & TMO/TM Mail RcptDt. #22

In the Matter of Application No. 76/439,124 for THERMO FUEL
Applicant: Breakthrough Engineered Nutrition, Inc.
Application Date: August 9, 2002
Publication Date: December 31, 2002

TWIN LABORATORIES, INC.

Opposer,

v.

BREAKTHROUGH ENGINEERED
NUTRITION, INC.,

Applicant.

Opposition No. 91155955

ANSWER

To: Box TTAB - No Fee
Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

03 JUN 10 AM 9:50

Applicant, Breakthrough Engineered Nutrition, Inc. ("Applicant"), by and through its undersigned attorneys and pursuant to Rule 2.106 of the Rules of Practice in Trademark Cases, files this its Answer to the Notice of Opposition filed by Opposer, Twin Laboratories, Inc. ("Opposer"), and states as follows:

1. Applicant admits the averments contained in Paragraph 1 of the Notice of Opposition.

2. Applicant admits the averments contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits the averments contained in Paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 4 of the Notice of Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 5 of the Notice of Opposition.

6. With respect to the averments contained in Paragraph 6 of the Notice of Opposition, Applicant admits that documents are attached to the Notice of Opposition as Exhibit A, but refers the Board to such documents for a full recitation of their terms. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the remaining averments contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 9 of the Notice of Opposition.

10. With respect to the averments contained in Paragraph 10 of the Notice of Opposition, Applicant admits that a document is attached to the Notice of Opposition as Exhibit B, but refers the Board to such document for a full recitation of its terms. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the remaining averments contained in Paragraph 10 of the Notice of Opposition.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 11 of the Notice of Opposition.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 12 of the Notice of Opposition.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the averments contained in Paragraph 13 of the Notice of Opposition.

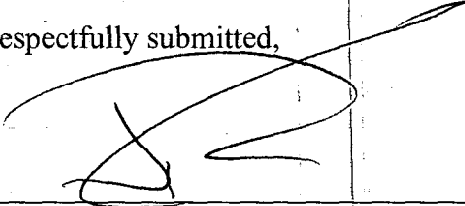
14. Applicant denies the averments contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the averments contained in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the averments contained in Paragraph 16 of the Notice of Opposition.

WHEREFORE, Applicant prays that this Opposition be dismissed, that its Application Serial No. 76/439,124 be granted, and that the mark therein, sought for the services therein specified in International Class 5, be registered.

Respectfully submitted,



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Attorneys for Applicant, Breakthrough Engineered Nutrition, Inc.

May 23, 2003.

CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing Answer is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Box TTAB – No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

on May 23, 2003.



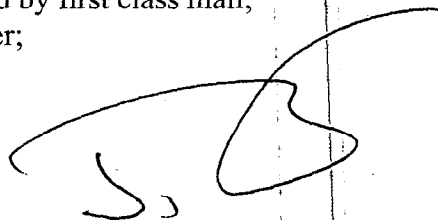
J. TODD TIMMERMAN, ESQUIRE

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing Answer has been served upon Attorneys for Opposer, Chester Rothstein, Esquire of Amster, Rothstein & Ebenstein, at 90 Park Avenue, New York, New York 10016, as follows:

- by delivering a copy of the paper to the person served;
- by leaving a copy at the usual place of business of the person served, with someone in the person's employment;
- by leaving a copy at the residence of the person served, with a member of the person's family over the age of fourteen years and of discretion, since the person is not believed to have a usual place of business;
- by transmitting a copy to the person served by the "Express Mail Post Office to Addressee" service of the United States Postal Service;
- by transmitting a copy to the person served by first class mail;
- by transmitting a copy by overnight courier;

on May 23, 2003.



J. TODD TIMMERMAN, ESQUIRE