

TTAB

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

In the Matter of:)	
	)	Opposition No. 91163449
CarbSmart, Inc.)	
Opposer,	)	Mark: SMARTE CARB
	)	Ser. No.: 78/248,852
v.	)	Filed: May 13, 2003
	)	Published: October 12, 2004
Lifestyle Evolution, Inc.)	
Applicant.)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

Lifestyle Evolution, Inc. ("Applicant"), by and through its attorneys, ANDREW J.

CORNELIUS, P. C., hereby answers the Notice of Opposition filed by CarbSmart, Inc.

("Opposer") in the proceeding captioned above, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 1 of the Notice of Opposition.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid, with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451 on

January 25, 2005

Andrew J. Cornelius, Registration No. 29,142

Date: 1/25/05



01-27-2005

2. Applicant denies that Registration No. 2,777,137 is for the mark "CARBSMART." Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in Paragraph 2 of the Notice of Opposition.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 3 of the Notice of Opposition.

4. Applicant denies that the serial number of its application is 78/348,852. The correct serial number is 78/248,852. Applicant admits the remaining allegations made 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 the allegations made in Paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations made 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 the allegations made 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 the allegations made 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 the allegations made in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations made in Paragraph 10 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

11. The averments contained in Paragraphs 1 through 10 above are incorporated by reference as though fully rewritten herein.

First Affirmative Defense
Failure to State a Cause of Action

12. The Notice of Opposition fails to state a claim upon which relief may be granted.

Second Affirmative Defense
Lack of Standing

13. Opposer lacks standing under 15 U.S.C. §1063 to bring this opposition proceeding.

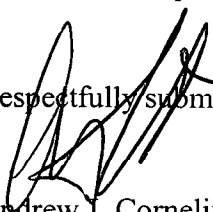
Third Affirmative Defense
No Likelihood of Confusion

14. Use of the mark "SMARTE CARBE" by Applicant in connection with nutrition/snack bars and "CARBSMART" by Opposer with the services identified in Paragraph 2 of the Notice of Opposition or Paragraph 3 of the Notice of Opposition is not likely to cause confusion or to cause mistake or to deceive within the meaning of 15 U.S.C. Section 1052(d).

WHEREFORE, Applicant prays that Opposition Proceeding No. 91163449 be dismissed in its entirety.

The undersigned hereby authorizes the United States Patent and Trademark Office to charge to Deposit Account No. 03-3280 any fee required to file and process this paper.

Respectfully submitted,


Andrew J. Cornelius, Esquire
Reg. No. 29,142
Attorney for Applicant

January 25, 2005

ANDREW J. CORNELIUS, P. C.
305 Mt. Lebanon Boulevard, Suite 205
Pittsburgh, Pennsylvania 15234
Telephone No.: (412) 571-9552

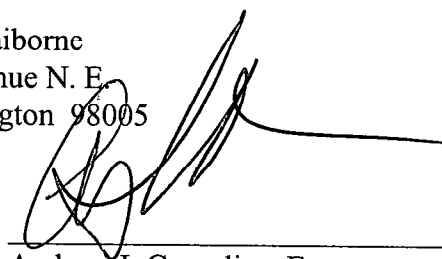
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:)	
	)	Opposition No. 91163449
CarbSmart, Inc.)	
Opposer,	)	Mark: SMARTE CARB
	)	Ser. No.: 78/248,852
v.	)	Filed: May 13, 2003
	)	Published: October 12, 2004
Lifestyle Evolution, Inc.)	
Applicant.)	

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2005, a true and correct copy of the foregoing "APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES" was served on Opposer, CarbSmart, Inc., in the proceeding captioned above by mailing the same by first class mail, postage prepaid, addressed to:

Anthony Claiborne
849 136th Avenue N. E.
Bellevue, Washington 98005



Andrew J. Cornelius, Esq.
Reg. No. 29,142
ANDREW J. CORNELIUS, P. C.
305 Mt. Lebanon Boulevard, Suite 205
Pittsburgh, PA 15234
(412) 571-9552

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid, with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451 on

January 25, 2005


Andrew J. Cornelius, Registration No. 29,142

Date: 1/25/05