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

Proceeding	91166274
Party	Defendant Anabolic Laboratories, Inc. Anabolic Laboratories, Inc. 26021 Commercentre Drive Lake Forest, CA 92630
Correspondence Address	Tirzah Abe Lowe Knobbe, Martens, Olson & Bear, LLP Fourteenth Floor - 2040 Main Street Irvine, CA 92614
Submission	Answer
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Date	09/26/2005
Attachments	Answer to Notice of Opposition.pdf (6 pages)

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

Ultimate Nutrition, Inc.,

Opposer,

v.

Anabolic Laboratories, Inc.,

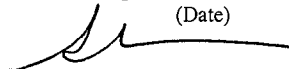
Applicant.

Opposition No. 91,166,274
Serial No. 78/339,070

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at <http://esta.uspto.gov/> on:

September 26, 2005

(Date)



Stacey R. Halpern

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

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

Dear Sir or Madam:

Anabolic Laboratories, Inc. ("Applicant"), hereby answers the Notice of Opposition filed by Ultimate Nutrition, Inc. ("Opposer") against U.S. Trademark Application Serial No. 78/339,070 (the "'070 Application") as follows:

1. Answering Paragraph 1, Applicant admits the allegations contained therein.
2. Answering Paragraph 2, Applicant admits the allegations contained therein.
3. Answering Paragraph 3, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 3 and accordingly denies each and every allegation therein.

4. Answering Paragraph 4, Applicant admits that what appears to be a photocopy of a certified copy of U.S. Trademark Registration No. 1,541,169 for the mark ULTIMATE NUTRITION is attached as Exhibit 1 to the Notice of Opposition and that Exhibit 1 indicates it was issued on May 20, 1989. As to the remaining allegations set forth in Paragraph 4, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of these allegations, and accordingly denies each and every remaining allegation therein.

5. Answering Paragraph 5, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 5 and accordingly denies each and every allegation therein.

6. Answering Paragraph 6, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 6 and accordingly denies each and every allegation therein.

7. Answering Paragraph 7, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 7 and accordingly denies each and every allegation therein.

8. Answering Paragraph 8, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 8 and accordingly denies each and every allegation therein. With regard to the second sentence of Paragraph 8, Applicant denies the allegations contained therein.

9. Answering Paragraph 9, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 9 and accordingly denies each and every allegation therein.

10. Answering Paragraph 10 of the Notice of Opposition, Applicant admits that if it is granted registration for the mark shown in the '070 Application, it would thereby obtain at least a *prima facie* exclusive right to the use of the exact mark shown in the '070 Application. With regard to the remaining allegations containing in Paragraph 10, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in the remainder of Paragraph 10 and accordingly denies each and every allegation therein.

11. Answering Paragraph 11 of the Notice of Opposition, Applicant denies that Opposer has used the ULTIMATE mark since a date prior to Applicant's use of ULTIMATE marks. With regard to the remaining allegations contained therein, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in the remainder of Paragraph 11 and accordingly denies each and every allegation therein.

12. Answering Paragraph 12, Applicant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 12 and accordingly denies each and every allegation therein.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

Applicant alleges that due to the differences between Opposer's alleged mark and the mark identified in the '070 Application, there is no likelihood of confusion, mistake or deception.

SECOND AFFIRMATIVE DEFENSE

Applicant alleges that due to Applicant's prior use and registration of marks containing the term ULTIMATE, there is no likelihood of confusion, mistake or deception.

THIRD AFFIRMATIVE DEFENSE

Due to the coexistence of numerous third-party marks containing or consisting of the term ULTIMATE for nutritional and dietary supplements, nutritional food supplements, vitamins, health foods, and/or related products, there is no likelihood of confusion, mistake or deception between Opposer's alleged mark and Applicant's mark.

FOURTH AFFIRMATIVE DEFENSE

As Applicant is the senior and prior user of marks containing the term ULTIMATE, Opposer cannot be damaged by registration of the '070 Application.

FIFTH AFFIRMATIVE DEFENSE

Applicant's date of first use of the mark ULTIMATE ONE, as set forth in Registration No. 2,284,700, predates Opposer's filing date, alleged date of first use and registration date.

SIXTH AFFIRMATIVE DEFENSE

Applicant's date of the first use of the mark ULTIMATE TWO, as set forth in Registration No. 2,289,893, predates Opposer's filing date, alleged date of first use and registration date.

SEVENTH AFFIRMATIVE DEFENSE

Opposer's mark is weak and only entitled to a narrow scope of protection, if any.

EIGHTH AFFIRMATIVE DEFENSE

Applicant alleges Opposer is barred due to the equitable doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

Applicant alleges that Opposer is barred due to the equitable doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

Applicant alleges that Opposer is barred due to the equitable doctrine of acquiescence.

ELEVENTH AFFIRMATIVE DEFENSE

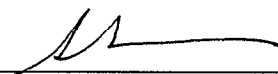
Due to the coexistence of Opposer's alleged mark and Applicant's other marks containing the term ULTIMATE in the marketplace without any confusion for many years, there is no likelihood of confusion, mistake or deception.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark. Please charge Deposit Account No. 11-1410 for any fees which may be required, or credit any overpayment to this account.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

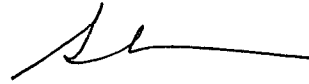
Dated: September 26, 2005

By: 
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Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Applicant,
Anabolic Laboratories, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on September 26, 2005, addressed as follows:

Paul Fattibene
Fattibene and Fattibene
2480 Post Road
Southport, CT 06890



Stacey R. Halpern

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