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

Proceeding	91167150
Party	Defendant Pioneer Hi-Bred International, Inc. Pioneer Hi-Bred International, Inc. 700 Capital Square 400 Locust Street Des Moines, IA 50309
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Date	12/05/2005
Attachments	Pioneer's Answer to Dow's Notice of Opposition to NUTRIUM & Design 12-5-2005.pdf (7 pages)

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

DOW AGROSCIENCES LLC,)
)
 Opposer,) Opposition No. 91167150
)
 v.)
)
 PIONEER HI-BRED INTERNATIONAL, INC.,)
)
 Applicant.)
 _____)

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Pioneer Hi-Bred International, Inc. answers the Notice of Opposition filed by Dow AgroSciences LLP against pending Application Serial No. 78/501,877 as follows:

1. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice of Opposition, and therefore denies them.

2. Pioneer admits that the U.S. Patent and Trademark Office TARR database shows Dow as the registrant of Registration No. 2,946,433 for the mark NATREON for “edible oils, namely canola oil,” which lists May 3, 2005 as the registration date and October 31, 2000 as the claimed date of first use in commerce. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 2 of the Notice of Opposition, and therefore denies them.

3. Pioneer admits that the U.S. Patent and Trademark Office TARR database shows Dow as the applicant for Application Serial No. 78/160,122 for the mark NATREON CANOLA OIL and Design for “edible oils, namely, canola oil,” which was filed on an intent-to-use basis and lists September 3, 2002 as the filing date. Pioneer lacks sufficient information to form a belief as

to the truth or falsity of the remaining allegations in Paragraph 3 of the Notice of Opposition, and therefore denies them.

4. Pioneer admits that the U.S. Patent and Trademark Office TARR database shows Dow as the applicant for Application Serial No. 78/669,973 for the mark NATREON and Design for "edible oils, namely sunflower oil," which was filed on an intent-to-use basis and lists July 13, 2005 as the filing date. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 4 of the Notice of Opposition, and therefore denies them.

5. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 5 of the Notice of Opposition, and therefore denies them.

6. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 6 of the Notice of Opposition, and therefore denies them.

7. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegation set forth in Paragraph 7 of the Notice of Opposition, and therefore denies it.

8. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 8 of the Notice of Opposition, and therefore denies them.

9. Pioneer admits that it seeks to register the mark NUTRIUM and Design shown in application Serial No. 78/501,877 for "soybean oil sold as bulk oil to food processors," admits that it filed application Serial No. 78/501,877 on an intent-to-use basis on October 19, 2004, and admits that application Serial No. 78/501,877 was published for opposition in the Trademark Official

Gazette on September 27, 2005. Pioneer denies the remaining allegations set forth in Paragraph 9 of the Notice of Opposition.

10. Denied.

11. Denied.

12. Pioneer admits that its soybean oil is sold as bulk oil to food processors for use in making food products that are edible, but denies that its soybean oil can be purchased by the general public and consumed as a food product itself.

13. Pioneer admits that it markets soybean oil as low linolenic, as having zero grams of trans fat per serving, and as helping to reduce or eliminate trans fat in food products, and therefore denies Opposer's allegation. Pioneer denies that it sells any oils for use in food products, other than its soybean oil, and therefore denies the remaining allegations set forth in Paragraph 13 of the Notice of Opposition.

14. Pioneer admits that its soybean oil contains saturated fat, but lacks sufficient information as to the meaning of the word "high" to form a belief as to the truth or falsity of the allegation that Pioneer's soybean oil is "high in saturated fat," and therefore denies it. Pioneer denies that it sells any oils for use in food products, other than its soybean oil, and therefore denies the remaining allegations set forth in Paragraph 14 of the Notice of Opposition.

15. Pioneer lacks sufficient information as to "Opposer's oils" and as to the meaning of "stable" to form a belief as to the truth or falsity of the allegation that Pioneer's soybean oil is "stable for a maximum of 22 hours, or about half the time that Opposer's oils are stable," and therefore denies it. Pioneer denies that it sells any oils for use in food products, other than its

soybean oil, and therefore denies the remaining allegations set forth in Paragraph 15 of the Notice of Opposition.

16. Pioneer denies that its soybean oil is inferior to any of Opposer's oils. Pioneer lacks sufficient information as to "Opposer's oils" or as to the meaning of the words "high" or "stable" to form a belief as to the truth or falsity of the allegations that Pioneer's soybean oil is "high in saturated fat" and is "stable for only half the time that Opposer's oils are stable," and therefore denies those allegations. Pioneer denies that it sells any oils for use in food products, other than its soybean oil, and therefore denies the remaining allegations set forth in Paragraph 16 of the Notice of Opposition.

17. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 17 of the Notice of Opposition, and therefore denies them.

18. Denied.

19. Pioneer denies that its soybean oil is directly competitive with Dow's canola oil and sunflower oil. Pioneer denies that it sells any oils for use in food products, other than its soybean oil, and therefore denies the remaining allegations set forth in Paragraph 19 of the Notice of Opposition.

20. Pioneer admits that it uses the NUTRIUM and Design mark in connection with soybean oil sold as bulk oil to food processors, but denies that its soybean oil can be purchased by the general public and consumed as a food product itself. Pioneer lacks sufficient information as to the meaning of "food service industry" to form a belief as to the truth or falsity of the allegation that Pioneer markets and sells its soybean oil to "the food service industry," and therefore denies it.

Pioneer denies that it sells any oils for use in food products, other than its soybean oil, and therefore denies the remaining allegations set forth in Paragraph 20 of the Notice of Opposition.

21. Pioneer lacks sufficient information to form a belief as to the truth or falsity of the allegations set forth in Paragraph 21 of the Notice of Opposition, and therefore denies them.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Pioneer denies that it has no rights in the NUTRIUM and Design mark. Pioneer lacks sufficient information as to “Opposer’s rights” or as to the meaning of “rights . . . prior to . . . rights” to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 26 of the Notice of Opposition, and therefore denies them.

27. Denied.

AFFIRMATIVE DEFENSES

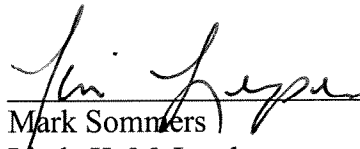
28. The Notice of Opposition fails to state a claim upon which relief may be granted. Dow lacks a factual basis on which to file this opposition. Dow lacks a legal basis on which to file this opposition.

29. Dow’s claims are barred by the doctrines of estoppel by laches, waiver, and acquiescence.

WHEREFORE, Applicant prays that this opposition be dismissed with prejudice, and that Applicant's mark be granted registration.

Respectfully submitted,

Date: December 5, 2005



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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served this 5th day of December 2005 by U.S. mail, first-class postage pre-paid, to the following:

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Counsel for Opposer
Dow AgroSciences LLC

