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Filing date: **05/12/2010**

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

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|------------------------|--|
| Proceeding | 91193377 |
| Party | Defendant Arthur Andrew Medical, Inc. |
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| Submission | Answer |
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| Signature | /Donna H. Catalfio/ |
| Date | 05/12/2010 |
| Attachments | GK_DOCS-#2446532-v1-Answer_to_Notice_of_Opposition.pdf (4 pages) (15550 bytes) |

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

In The Matter of Opposition No. 91193377
Mark: DEVACOR
Serial No.: 77/730,852
Filing Date: May 6, 2009
Pub. Date: September 15, 2009
TTAB Atty: Linda M. Skoro

| | |
|------------------------------|---|
| Deva Nutrition, LLC, |) |
| |) |
| Opposer, |) |
| |) |
| vs. |) |
| |) |
| Arthur Andrew Medical, Inc., |) |
| |) |
| Applicant. |) |
| |) |
| _____ |) |

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER

In answer to Opposer’s Notice of Opposition, Arthur Andrew Medical, Inc. (“Applicant”) states:

1. Applicant denies the allegations contained in paragraph 1.
2. Answering paragraph 2, Applicant asserts that the USPTO records attached to the Notice of Opposition speak for themselves and therefore, denies any allegations contained in this paragraph inconsistent therewith.
3. Applicant is without sufficient information to answer the allegations of paragraph 3, and on that basis denies the same.
4. With respect to the first sentence of paragraph 4, in which the Opposer asserts that Applicant had full knowledge of Opposer’s existence and rights in the registered DEVA mark, Applicant affirmatively states that it did not have any knowledge of the Opposer and/or the Opposer’s trademark rights prior to the institution of this opposition proceeding. Applicant accordingly denies the allegations contained in the first sentence of paragraph 4. With respect to the second sentence of paragraph 4, in which Opposer asserts that it first used the mark in

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commerce on September 1, 2003, Applicant is without sufficient information to admit or deny, and on that basis denies the same.

5. Applicant is without sufficient information to answer the allegations of paragraph 5, and on that basis denies the same.

6. Applicant is without sufficient information to answer the allegations of paragraph 6, and on that basis denies the same.

7. With respect to the allegations contained in paragraph 7, Applicant agrees that the term “deva” has no generic or descriptive meaning and no particular significance in the trade or industry. However, Applicant denies that the term “de” has no significance in the Applicant’s industry. Applicant affirmatively states that it choose to use a mark beginning with the letters “de” specifically because those letters are short for “digestive enzyme.” With respect to the significance of the Opposer’s trademark within the industry, Applicant is without sufficient information to admit or deny, and therefore denies the same.

8. Applicant admits the allegations contained in paragraph 8.

9. Applicant denies the allegations contained in paragraph 9.

10. Applicant denies the allegations contained in paragraph 10.

11. Applicant denies the allegations contained in paragraph 11.

12. Applicant admits that it describes its product as a dietary supplement, and denies all other allegations contained in paragraph 12.

13. With respect to the allegations contained in paragraph 13, Applicant admits that its products may be purchased at independent grocers, health food stores, online stores and through wholesale distributors such as Select Nutrition and UNFI. Applicant denies all remaining allegations set forth in paragraph 13.

14. Applicant denies the allegations contained in paragraph 14.

15. Applicant denies the allegations contained in paragraph 15.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses:

Absence of likelihood of confusion, and existence of differences in the parties’ marks, goods, channels of trade and purchasers.

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Additional defenses may become available as Applicant continues to discover facts about Opposer and as discovery proceeds in this case. Therefore, Applicant reserves the right to raise all affirmative defenses in law or equity.

WHEREFORE, Applicant requests that the Opposition be dismissed with prejudice, and that it be accorded further relief as provided by the laws and rules of practice in trademark cases.

Respectfully submitted,

Dated: May 12, 2010

By: /Donna H. Catalfio/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of this Answer has been served upon the following party via U.S. Mail at their address of record.

Drew Alia
ALIA LAW CENTER
1218 S. Broad Street
Philadelphia, PA 19146
Attorney for Opposer, Deva Nutrition LLC

/Donna H. Catalfo/
Date: May 12, 2010