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

Proceeding	91194820
Party	Defendant Your Vitamins, Inc.
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Date	06/18/2010
Attachments	NUTRI-SKIN Answer to Opposition.pdf (6 pages)(16631 bytes)

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

Pure & Natural Company, Opposer, v. Your Vitamins, Inc., Applicant.	Oppo. No. 91194820 Mark: NUTRI-SKIN Serial. No: 77/708,863 Published: 3/9/2010
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ANSWER

Your Vitamins, Inc. (“Applicant”) hereby answers the Notice of Opposition filed on May 10, 2010 (“Notice of Opposition”) by Pure & Natural Company (“Opposer”), which opposes Applicant’s U.S. Trademark Application Serial No. 77/708,863 (“Subject Application”) for the mark NUTRI-SKIN (“Applicant’s Mark”).

1. In response to Paragraph 1 of the Notice of Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies such allegations. In particular, the Opposer has defined NUTRISKIN Marks in the Notice of Opposition as “the trademark NUTRISKIN or forms thereof.” It is unclear and ambiguous what other forms of the trademark NUTRISKIN the Opposer claims to have adopted and used and therefore, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations pertaining to the NUTRISKIN Marks contained in this paragraph and throughout the Notice of Opposition and, on that basis, denies such allegations in this paragraph and throughout the Notice of Opposition.

2. In response to Paragraph 2 of the Notice of Opposition, Applicant admits that Opposer filed U.S. Trademark Application Serial No. 77/674,128 (“Opposer’s Application”) for the mark DIAL NUTRISKIN WITH FRUIT OIL (“Opposer’s Mark”) for “Bar soap; Bath soaps; Body washes; Liquid soaps” in International Class 3, and that Opposer’s Application was allowed on September 15, 2009. Applicant lacks sufficient information to form a belief as to the truth or falsity as to the remaining allegations and, on that basis, denies such allegations.

3. In response to Paragraph 3 of the Notice of Opposition, Applicant admits to the allegation contained therein.

4. In response to Paragraph 4 of the Notice of Opposition, Applicant admits that the Subject Application was filed on April 7, 2009 and Opposer’s Application was filed on February 19, 2009.

5. In response to Paragraph 5 of the Notice of Opposition, Applicant admits that Opposer filed U.S. Trademark Application Serial No. 77/784,687 (“Suspended Application”) on July 20, 2009 for the mark DIAL NUTRISKIN (“Suspended Mark”) for “Bar soap; Bath soaps; Body washes; Hand soaps; Liquid soaps; Skin lotions; Soaps for personal use; Waterless soap” in International Class 3. It is the Applicant’s understanding, however, that the Suspended Application was also filed for “Antibacterial alcohol skin sanitizer gel; Hand-sanitizing preparations” in International Class 5.

6. In response to Paragraph 6 of the Notice of Opposition, Applicant admits that a Suspension Letter was mailed on September 8, 2009, citing that Applicant’s prior-filed pending Subject Application may present a bar to registration of the Suspended Mark based on Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

7. In response to Paragraph 7 of the Notice of Opposition, Applicant admits the allegation contained therein.

8. In response to Paragraph 8 of the Notice of Opposition, Applicant admits the allegation contained therein.

9. In response to Paragraph 9 of the Notice of Opposition, the allegations contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant denies that it has never made a bona fide use in commerce of Applicant's Mark, whether prior to or after the filing of Applicant's Mark.

10. In response to Paragraph 10 of the Notice of Opposition, Applicant admits that a specimen was filed by Applicant on April 7, 2009 in connection with Applicant's Mark and denies that the specimen is merely a printer's proof. The remaining allegations call for a legal conclusion and therefore a response is not required. To the extent a response is required, Applicant denies that Applicant's Mark has never been used in commerce.

11. In response to Paragraph 11 of the Notice of Opposition, the allegations contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Application denies the allegation contained therein.

12. In response to Paragraph 12 of the Notice of Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies such allegations.

13. In response to Paragraph 13 of the Notice of Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies such allegations.

14. In response to Paragraph 14 of the Notice of Opposition, Applicant admits that the Subject Application and Opposer's Application were filed in the same international class. The rest of the allegations call for a legal conclusion and therefore, no further response is required. To the extent a response is required, Applicant lacks sufficient information as to Opposer's goods to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies such allegations.

15. In response to Paragraph 15 of the Notice of Opposition, the allegations contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant lacks sufficient information as to Opposer's goods, consumers, channels of trade and use of Opposer's marks to form a belief as to the truth or falsity of the allegations contained therein and, on that basis, denies such allegations.

16. In response to Paragraph 16 of the Notice of Opposition, the allegations contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant denies the rest of the allegations contained therein as to the Opposer's Mark.

17. In response to Paragraph 17 of the Notice of Opposition, the allegations contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant denies the allegations contained therein as to the Opposer's Mark.

18. In response to Paragraph 18 of the Notice of Opposition, the allegation contained therein call for a legal conclusion and therefore no response is required. To the extent a response is required, Applicant denies the allegation contained therein as to the Opposer's Mark.

