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

Proceeding	91205081
Party	Defendant Dynamic Sports Nutrition, LLC
Correspondence Address	JOHN S EGBERT EGBERT LAW OFFICES PLLC 1314 TEXAS AVENUE, 21ST FLOOR HOUSTON, TX 77002-1897 UNITED STATES mail@egbertlawoffices.com
Submission	Answer
Filer's Name	John S. Egbert
Filer's e-mail	mail@egbertlawoffices.com
Signature	/2259-36/
Date	02/22/2013
Attachments	2259-36 Answer to Amended Notice of Opposition.pdf (9 pages)(18311 bytes)

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

In the Matter of Trademark Application No. 85/340,058
Published in the Official Gazette on January 10, 2012

Merck Sharp & Dohme B.V. (as successor	§	
in interest to MSD OSS B.V.),	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91205081
	§	
DYNAMIC SPORTS NUTRITION, LLC,	§	
	§	
Applicant.	§	

ANSWER TO AMENDED NOTICE OF OPPOSITION

DYNAMIC SPORTS NUTRITION, LLC (hereinafter referred to as "Applicant"), for the Answer to the Notice of Opposition filed by Merck Sharp & Dohme B.V. (as successor in interest to MSD OSS B.V.) (hereinafter referred to as "Opposer"), against the application for registration of the trademark "DECA-DURABOLIN", U.S. Application Serial No. 85/340,058, filed on June 7, 2011, and published in the Official Gazette on January 10, 2012, pleads and avers as follows:

1. Answering the introductory paragraph of the Notice of Opposition, Applicant specifically denies Opposer's claim that it will be damaged by registration of Applicant's Mark.
2. Answering Paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.
3. Answering Paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

3. Answering Paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations, including any allegation that Opposer has trademark rights to the name "DURABOLIN" or "DECA-DURABOLIN".

5. Answering Paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

6. Answering Paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations. Applicant does admit that Opposer and its affiliated companies do not currently sell prescription injectable steroid products under the "DURABOLIN" and "DECA-DURABOLIN" marks in the United States.

7. Answering Paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

8. Answering Paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations, including any allegation as to the current owner or status of any alleged trademark rights related to the terms "DURABOLIN" or "DECA-DURABOLIN".

9. Answering Paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

10. Answering Paragraph 9 of the Notice of Opposition, Applicant admits the allegations contained therein.

11. Answering Paragraph 10 of the Notice of Opposition, Applicant admits the allegations contained therein.

12. Answering Paragraph 11 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

13. Answering Paragraph 12 of the Notice of Opposition, Applicant admits the allegations contained therein.

14. Answering Paragraph 13 of the Notice of Opposition, Applicant admits the allegations contained therein.

15. Answering Paragraph 14 of the Notice of Opposition, Applicant admits the allegations contained therein.

16. Answering Paragraph 15 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

17. Answering Paragraph 16 of the Notice of Opposition, Applicant incorporates herein by reference each and every admission and denial contained in paragraphs 1-16 above. Furthermore, Applicant specifically denies each and every additional allegation contained within Paragraph 16.

18. Answering Paragraph 17 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

19. Answering Paragraph 18 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

20. Answering Paragraph 19 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

21. Answering Paragraph 20 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

22. Answering Paragraph 21 of the Notice of Opposition, Applicant admits the allegations contained therein.

23. Answering Paragraph 22 of the Notice of Opposition, Applicant admits the allegations contained therein.

24. Answering Paragraph 23 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

25. Answering Paragraph 24 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

26. Answering Paragraph 25 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

27. Answering Paragraph 26 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

28. Answering Paragraph 27 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

29. Answering Paragraph 28 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

30. Answering Paragraph 29 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

31. Answering Paragraph 30 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein, including any allegation that Opposer is the owner of the cited marks.

32. Answering Paragraph 31 of the Notice of Opposition, Applicant incorporates herein by reference each and every admission and denial contained in paragraphs 1-31 above. Furthermore, Applicant specifically denies each and every additional allegation contained within Paragraph 31.

33. Answering Paragraph 32 of the Notice of Opposition, Applicant admits the allegations contained therein.

34. Answering Paragraph 33 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

35. Answering Paragraph 34 of the Notice of Opposition, Applicant admits the allegations contained therein.

36. Answering Paragraph 35 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

37. Answering Paragraph 36 of the Notice of Opposition, Applicant does not have sufficient knowledge or information as to form a belief as to the truth or accuracy of the allegations contained therein and accordingly denies the allegations.

38. Answering Paragraph 37 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

39. Answering Paragraph 38 of the Notice of Opposition, Applicant admits the allegations contained therein.

40. Answering Paragraph 39 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

41. Answering Paragraph 40 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

42. Answering Paragraph 41 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

43. Answering Paragraph 42 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

44. Answering Paragraph 43 of the Notice of Opposition, Applicant incorporates herein by reference each and every admission and denial contained in paragraphs 1-43 above. Furthermore, Applicant specifically denies each and every additional allegation contained within Paragraph 43.

45. Answering Paragraph 44 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

46. Answering Paragraph 45 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

47. Answering Paragraph 46 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

48. Answering Paragraph 47 of the Notice of Opposition, Applicant specifically denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

1. Applicant affirmatively alleges that Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

2. Applicant affirmatively alleges that the terms "DURABOLIN" and "DECA-DURABOLIN" are fanciful terms that in no way describes the goods or any characteristic of the goods sold under the mark "DECA-DURABOLIN".

3. Applicant affirmatively alleges that Opposer is not the owner of a trademark interest in the terms "DURABOLIN" or "DECA-DURABOLIN" in the U.S.

4. Applicant affirmatively alleges that Opposer has abandoned any rights to the terms "DURABOLIN" and "DECA-DURABOLIN".

5. Applicant affirmatively alleges that Opposer is not called "DURABOLIN" or "DECA-DURABOLIN".

WHEREFORE, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer, and Applicant prays that this opposition will be dismissed with prejudice and that Applicant be granted registration of its trademark.

Respectfully submitted,

February 22, 2013
Date

/2259-36/
John S. Egbert
Reg. No. 30,627
Kevin S. Wilson

Egbert Law Offices, PLLC
1314 Texas Ave., 21st Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)

ATTORNEY FOR APPLICANT
DYNAMIC SPORTS NUTRITION, LLC

CERTIFICATE OF SERVICE

I hereby certify that Applicant's Answer to Opposer's Amended Notice of Opposition is being sent by first class mail on February 22, 2013 to the attorney of record for Opposer at the following address:

Marie Lavalleye
Hope Hamilton
Bingham Leverich
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

ATTORNEY FOR OPPOSER
MSD OSS B.V.

/2259-36/
John S. Egbert
Reg. No. 30,627
Kevin S. Wilson

Egbert Law Offices, PLLC
1314 Texas Ave., 21st Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)

ATTORNEY FOR APPLICANT
DYNAMIC SPORTS NUTRITION, LLC

JSE:mfs
Our File: 2259-36