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

Proceeding	91205970
Party	Plaintiff 21st Century Brands LLC
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Submission	Answer to Counterclaim
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

21 <sup>st</sup> Century Brands, LLC,	)	
An Arizona Limited Liability Company,	)	
	)	Opposition No. 91205970
	)	
Opposer,	)	
v.	)	Serial No. 85/434,448
	)	
LXR Biotech, LLC,	)	
A Michigan Limited Liability Company,	)	
	)	
Applicant.	)	

**OPPOSER’S RESPONSE TO COUNTERCLAIM**

Opposer, 21<sup>st</sup> Century Brands, LLC (hereinafter “Opposer”), hereby files its response to the counterclaims, including Applicant’s Cancellation Petition set forth in the Answer filed August 16, 2012 by LXR Biotech, LLC, a Michigan limited liability company (hereinafter “Applicant”) in the instant Opposition.

Opposer hereby answers Applicant’s Cancellation Petition as follows:

1. Admits that Opposer is the Registrant of U.S. Trademark Reg. No. 3,846,553 for e<sup>6</sup> in International Class 32 for energy drinks, issued on the Principal Register September 7, 2012. However, Opposer denies the allegations in Paragraphs 5 and 21-26 on pages 4 and 5 of the Answer, to the extent that such Paragraphs may be incorporated in Applicant’s Cancellation Petition

2. Denies that the registered e<sup>6</sup> trademark of Opposer is merely descriptive within the meaning of Section 2(e) of the Lanham Act.
3. Denies that the registered e<sup>6</sup> trademark of Opposer is a generic reference to energy drinks.
4. Denies that the registered e<sup>6</sup> trademark has not acquired distinctiveness and does not and cannot function as a trademark.
5. Upon information and belief, Applicant is unable to identify any specific damage or continuing damage to Applicant/Petitioner by the continued presence and enforcement of the registered e<sup>6</sup> trademark as applied to energy drinks under 15 U.S.C. § 1052(e), including at least 15 U.S.C. § 1052(e)(1).
6. Denies that the registration of the e<sup>6</sup> trademark is contrary to the provisions of the Lanham Act on the grounds that such trademark is merely descriptive of energy drinks and accordingly denies that cancellation of the registered e<sup>6</sup> trademark is proper.
7. Acknowledges that Applicant repeats and incorporates by reference the allegations in the foregoing paragraphs but is unable to comment further because the term “foregoing paragraphs” is indefinite and, in any event, denies such allegations for the reasons set forth in Paragraphs 1-6 of this Response.
8. Denies that submission of the application which matured into the e<sup>6</sup> trademark registration was false and fraudulent and accordingly denies

that the procurement of the e<sup>6</sup> trademark registration was a violation of 15 U.S.C. §1064(3).

9. Admits that the application which matured into the e<sup>6</sup> trademark registration was filed in International Class 32 for energy drinks as the description of goods.
10. Denies that the goods of the e<sup>6</sup> trademark registration, i.e., energy drinks, should be properly classified in International Class 005.
11. Denies that the application which matured into the e<sup>6</sup> trademark registration was false and fraudulent and accordingly denies that Applicant has been damaged by such registration.
12. Denies that the application which matured into the e<sup>6</sup> trademark registration contained false and fraudulent representations to the USPTO and denies, upon information and belief, that Applicant suffered irreparable harm and damage and injury by such registration.

WHEREFORE, Opposer respectfully prays that the Cancellation petition be summarily denied as being brought in bad faith for the purpose of obscuring Applicant's defects in the Answer to the Notice of Opposition. In this regard, Opposer notes that Applicant has provided no basis to support the allegation that the e<sup>6</sup> trademark application and its subsequent registration was false and fraudulent.

Dated: September 21, 2012

Respectfully submitted,

By: /Gerald K. White/  
Gerald K. White, Esq.  
Attorney for Plaintiff  
Reg. No. 26,611

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Opposer's Response to Counterclaim was on even date served by First-Class mail, postage prepaid, on Attorney for Defendant, as follows:

John VanOphem  
Dobrusin & Thennisch PC  
29 W. Lawrence Street, Suite 210  
Pontiac, MI 48342

Date: September 21, 2012

/Gerald K. White/

Gerald K. White  
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