

ESTTA Tracking number: **ESTTA561802**

Filing date: **09/27/2013**

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

Proceeding	91211215
Party	Plaintiff Bohager Holdings, LLC
Correspondence Address	Jennifer L. Whitelaw WHITELAW LEGAL GROUP 3838 Tamiami Trail North, Suite 310 Naples, FL 34103 UNITED STATES ttabmail@whitelawfirm.com
Submission	Answer to Counterclaim
Filer's Name	JENNIFER L. WHITELAW
Filer's e-mail	ttabmail@whitelawfirm.com
Signature	/JENNIFER L. WHITELAW/
Date	09/27/2013
Attachments	Answer to Counterclaim.pdf(103911 bytes)

5. Opposer is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies same.
6. Opposer is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies same.
7. Opposer is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies same.
8. Opposer denies the allegations of paragraph 8.
9. Opposer denies the allegations of paragraph 9.
10. Opposer denies the allegations of paragraph 10.
11. Opposer further denies each, every, and all of the remaining allegations asserted by Applicant in all prefatory statements, counts and/or paragraphs of the Counterclaim which are not expressly admitted to be true herein.

AFFIRMATIVE DEFENSES

Opposer hereinafter sets forth its separate Affirmative Defenses, all upon information and belief, and in support thereof alleges the following.

FIRST AFFIRMATIVE DEFENSE

Applicant's Counterclaim, in whole or in part, fails to state a claim upon which relief can be granted against Opposer.

SECOND AFFIRMATIVE DEFENSE

Opposer has not abandoned the subject mark nor the subject registration.

THIRD AFFIRMATIVE DEFENSE

Applicant's Counterclaim is barred, in whole or in part, by the doctrine of laches, estoppel and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Counsel for Applicant, after having been properly served with full notice of this pending proceeding, then endeavored to make direct contact with the Opposer, a party that counsel for Applicant knew without a doubt and as a matter of public record in this pending proceeding, was already represented by counsel. Further, counsel for Applicant then endeavored to send a written contact to Opposer directly, inquiring as to matters going to the very heart of this proceeding and of the Applicant's counterclaim herein, as appears from the allegations of the Applicant's counterclaim. Applicant's counterclaim, now being expressly based on the aforementioned contact by Applicant's counsel to the Opposer who was represented by counsel, is improper, inaccurate, subject to being stricken, dismissed, or otherwise disqualified, and is without proper foundation in fact, law, or evidence as alleged therein.

ADDITIONAL AFFIRMATIVE DEFENSES RESERVED

Opposer's investigation is ongoing and, as a result thereof, Opposer specifically reserves the right to assert such additional Affirmative Defenses as may be found to be applicable through or following discovery in this case.

WHEREFORE, Opposer/Counterclaim Respondent, BOHAGER HOLDINGS, LLC, having fully set forth its Answer and Affirmative Defenses as required by law, requests that the

Counterclaim of Applicant/Counterclaim Petitioner, TOTAL NUTRITION HOLDINGS, LLC,
be dismissed and that its Opposition action previously asserted herein be sustained, and for such
other and further relief in the premises as may be deemed just and proper.

Respectfully submitted,

/JENNIFER L. WHITELAW/
JENNIFER L. WHITELAW
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this Opposer/Counterclaim Respondent's Answer and Affirmative Defenses in this matter is being provided to the Attorney for Applicant/Counterclaim Petitioner via U.S. First Class Mail on September 27, 2013:

JONATHON A. FALLON, ESQ.
MANDELBAUM SALSBURG, P.C.
155 PROSPECT AVE., STE105
WEST ORANGE, NEW JERSEY 07052-4298

/JENNIFER L. WHITELAW/
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