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

Proceeding	91214232
Party	Defendant Sapien Labs LLC
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Attachments	Neuroflex response_re_ESTTA579089 Neurobrands Opposition to Sapien Labs LLC Mark.pdf(123952 bytes)

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Submitted via ESTTA: February 5, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeals Board
PO Box 1451
Alexandria, VA 22313-1451

NEUROBRANDS, LLC

v.

Sapien Labs LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD, NEUROBRANDS, LLC v. SAPIEN LABS, LLC, OPPOSITION No.
91214232, ANSWER

Opposer's Assertion:

1. Upon information and belief, the Applicant is Sapien Labs LLC, a North Carolina

limited liability company with its principle place of business at 606 North Greensboro Street, Suite D3, Carrboro, North Carolina 27510 (“Applicant”).

Applicant’s Response: Admit.

Opposer’s Assertion:

2. Upon information and belief, Applicant filed the Opposed Application to register the standard character mark NEUROFLEX (“Applicant’s Mark”) on June 5, 2013 for use in connection with, “Dietary and nutritional supplements; Dietary and nutritional supplements containing omega-3 fatty acids; Dietary food supplements; Dietary supplements; Dietary supplements also containing omega-3 fatty acids; Dietary supplements for human consumption; Dietary supplements for cognition; Herbal supplements; Herbal supplements for cognition; Mineral nutritional supplements; Mineral supplements; Natural herbal supplements; Nutraceuticals for use as a dietary supplement; Nutraceuticals for use as a dietary supplement for cognition; Nutritional supplements; Nutritional supplements consisting primarily of vitamins, minerals, omega-3 fatty acids, and/or botanicals; Vitamin and mineral supplements; Vitamin supplements” in International Class 005 on the Principal Register (“Applicant’s Goods”). Upon information and belief, the Opposed Application was based on Applicant’s bona fide intention to use Applicant’s Mark for Applicant’s Goods in commerce.

Applicant’s Response: Admit.

Opposer’s Assertion:

3. Opposer NEUROBRANDS, LLC offers premium functional beverages that often

contain supplements and are designed to promote health and overall wellness for consumers' active lifestyle with natural ingredients. Opposer's goods are low calorie beverages that contain proprietary blends of dietary and nutritional supplements to yield various health benefits, and contain no artificial colors or flavors.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

4. Opposer is responsible for holding, monitoring, and enforcing compliance with its intellectual property. Opposer, NEUROBRANDS, LLC, and its respective predecessors in interests are collectively referred to herein as "NEUROBRANDS."

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

5. Opposer is the owner of various federal, state, and common law marks that include the term "Neuro," which include, but are not limited to the following pending applications and registrations which are valid and subsisting (collectively the "Neuro Marks"):

NEUROGASM 3609755 Apr. 21, 2009 Dec. 19, 2007

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary drink mix for use as a meal replacement; Dietary supplements; Dietary supplemental drinks.

NEUROGASM 3664829 Aug. 4, 2009 Jul. 15, 2008

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic fruit-flavored beverages.

NEUROBLISS 3664947 Aug. 4, 2009 Sept. 22, 2008

Int'l Class 032. U.S. Class 045 046 048. G & S: Non alcoholic fruit flavored beverages.

NEUROSLEEP 3677431 Sept. 1, 2009 Apr. 28, 2008

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic fruit-flavored beverages.

NEUROBLISS 3728338 Dec. 22, 2009 Jun. 3, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; dietary supplemental drinks.

NEUROSLEEP 3728339 Dec. 22, 2009 Jun. 3, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; dietary supplemental drinks.

NEUROSONIC 3728340 Dec. 22, 2009 Jun. 3, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; dietary supplemental drinks.

DRINK NEURO 3814258 Jul. 6, 2010 Nov. 19, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks. 3875430 Nov. 16, 2010 May 20, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional drinks and dietary and nutritional powdered drink mixes; dietary supplemental drinks.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic fruit flavored beverage.

NEUROTRIM 3923701 Feb. 22, 2011 Apr. 17, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary drink mix for use as a meal replacement; Dietary supplemental drinks; Dietary supplements for human consumption.

Int'l Class 032. U.S. Class 045 046 048. G & S: Energy drinks; Fruit-flavoured beverages; Non-alcoholic beverages, namely, carbonated beverages; Sports drinks; Sports drinks, namely, energy drinks.

NEUROSUN 3971387 May 31, 2011 Dec. 4, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters; fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROSONIC 3979927 Jun. 21, 2011 Dec. 26, 2008

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic fruit flavored beverages not for sale or consumption through soft drink fountains or at quick service restaurants.

NEUROSPORT 3981997 Jun. 21, 2011 May 5, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks.

Int'l Class 032. U.S. Class 045 046 048. G & S: Sports drinks; Sports drinks, namely, energy drinks.

NEUROAQUA 3986242 Jun. 28, 2011 Apr. 17, 2009

Int'l Class 032. U.S. Class 045 046 048. G & S: Aerated water; Bottled drinking water; Drinking water with vitamins; Drinking waters; Energy drinks; Flavored bottled water; Flavoured mineral water; Flavoured waters; Glacial water; Mineral and aerated waters; Mineral water; Nonalcoholic beverages, namely, carbonated beverages; Sparkling water.

DRINK SMART, DRINK NEURO 4068151 Dec. 6, 2011 Jun. 11, 2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; nutritionally fortified beverages; vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEURODREAMS 4084947 Jan. 10, 2012 Nov. 23, 2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROPASSION 4084948 Jan. 10, 2012 Nov. 23, 2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROSPLASH 4084949 Jan. 10, 2012 Nov. 23, 2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROSACK 4084950 Jan. 10, 2012 Nov. 23, 2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROFUN 4094076 Jan. 31, 2012 May 5, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary drink mix for use as a meal replacement; Dietary supplemental drinks.

Int'l Class 032. U.S. Class 045 046 048. G & S: Energy drinks; Fruit flavored drinks; Sports drinks; Sports drinks, namely, energy drinks.

NEUROSHAPE 4109264 Mar. 6, 2012 Sept. 28, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary supplemental drinks; Dietary supplements; Nutritionally fortified beverages; Vitamin fortified beverages.

NEUROSUPREME 4113103 Mar. 13, 2012 May 3, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEUROBLAST 4154416 June 5, 2012 Apr. 17, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary beverage supplements for human consumption. Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, carbonated beverages and energy drinks.

NEUROTHIN 4172025 Jul. 10, 2012 Aug. 11, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Nutritionally fortified beverages; Vitamin fortified beverages.

NEUROKIDS 4222174 Oct 9, 2012 Apr. 17, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary supplemental drinks.

Int'l Class 032. U.S. Class 045 046 048. G & S: Drinking water with vitamins; Energy drinks; Sports drinks; Sports drinks, namely, energy drinks.

NEUROJUNIOR 4222175 Oct 9, 2012 Apr. 17, 2009

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary supplemental drinks; Dietary supplements for human consumption.

Int'l Class 032. U.S. Class 045 046 048. G & S: Drinking water with vitamins; Energy drinks; Flavored waters; Flavoured waters; Sports drinks.

NEUROSNOOZE 85183059 Nov. 23,2010

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048.

G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

THERE'S A NEURO FOR THAT 4222718 Oct 9, 2012 May 3, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages.

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks.

NEURO PRIME 4250991 Nov 27, 2012 Aug. 11, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices and isotonic drinks

NEURO LIFE 85401216 Aug. 18, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Nutritionally fortified beverages; Vitamin fortified beverages; Non-alcoholic beverages, namely, nutritionally fortified beverages.

NEURO LIVING 85401255 Aug. 18, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages. Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices, and isotonic drinks.

NEURO SPARK 4247113 Nov 20, 2012 Sept. 7, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices, and isotonic drinks

NEUROLIMITLESS 85416624 Sept. 7, 2011

Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Dietary supplemental drinks; Nutritionally fortified beverages; Vitamin fortified beverages

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, mineral and aerated waters, fruit drinks, energy drinks, fruit flavored drinks, herbal juices, and isotonic drinks

NEURODAILY 85804788 Dec. 17, 2012

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, water beverages enhanced with vitamins or minerals

NEURODAILY 85804752 Dec. 17, 2012 Int'l Class 005. U.S. Class 006 018 044 046 051 052. G & S: Nutritionally fortified beverages

neuroProtein 86035716 Aug. 12, 2013

Int'l Class 005. U.S. Class 006, 018, 044, 046, 051, 052. G & S: Nutritionally fortified beverages;
Vitamin fortified beverages

neuroProtein 86035692 Aug. 12, 2013

Int'l Class 032. U.S. Class 045 046 048. G & S: Non-alcoholic beverages, namely, water beverages
enhanced with vitamins or minerals"

Opposer NEUROBRANDS expressly reserves the right to include and incorporate its other pending and
registered U.S. marks in the present opposition. Printouts of the registration certificates for each of the
registered Neuro Marks are attached in Exhibit A.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as
to the truth of this averment. However, the applicant notes the following:

- 1) The opposer manufactures and markets beverages, while the applicant is currently seeking to
manufacture and market nutritional supplements in tablet, capsule, and gelcap form, although the
applicant is not limited to these forms.
- 2) If the opposer does in fact own the above marks, this does not confer ownership of the prefixes
“neur-“ or “neuro-” which are standard prefixes in the English language, deriving from the Greek
“*neuron*.” According to Merriam Webster’s online dictionary:

Definition of *NEUR*-

1: nerve <*neural*> <*neurology*>

2: neural : neural and <*neuromuscular*>

Variants of *NEUR*-

neur- or neuro-

Origin of *NEUR-*

New Latin, from Greek, nerve, sinew, from *neuron* — more at [nerve](#)

Source: <http://www.merriam-webster.com/dictionary/neuro>

The Opposer cannot assert ownership over all uses of this standard English prefix any more than an owner of several marks containing the prefix “cardio” could assert ownership of all possible words and marks containing the prefix “cardio,” or related to the heart.

Hundreds of other active marks (380) containing the prefix “neuro” are currently active and registered to owners other than the Opposer. A selection of such marks are listed below:

NEURONEXT

NEUROFIT

NEUROCRUNCH

NEUROLINK

NEUROSIGMA

NEUOTRONIK

NEURO-ENERGY BALANCE

NEUROMATE

NEURO BODY NEXUS

NEURORESTORATIVE

NEURO-X

NEUROPHARMACA

NEUROTRAX

NEUROTRAINER

NEUROFIX

NEUROTRAIN

NEURO

NEUROPRO

THE NEUROCONNECTION

NEURO QUEST LLC

NEUROPLENISH

NEURO 15-FOSFORO

NEURO-REINTEGRATION

NEURONEXUS

NEURO ALERT

NEURO LEAN

NEUROQUEL

NEURO·WISE

NEUROVERSE

NEUROBRIDGE

NEUROFUZION

NEUROCOACH

NEUROVERSE

NEUROHOPE

NEUROSPICE

NEURODERM

NEUROCORE

NEUROONE

NEUROSTAR XPLOR

NEUROTUBE

NEUROASSESS

NEURO MED 7

NEUROSHAKE

NEUROBRIDGE

NEUROPACE

NEUROSAVE

NEUROFAST

NEUROLIPID FORTE

BLACKROCK NEUROMED

NEUROCAN

NEURO-STIM

NEUROSHIELD

NEURODETECT

NEUROPEPT

NEUROMATRIX

NEURODREAMER

NEUROIMAGINAL

NEUROIMPACT

NEUROLUMEN

NEURORHYTHM

NEUROSANO

SENTRY NEURO

NEUROREINVENTION

NEUROSUMMIT

NEUROBIONYX

NEUROQOL

NEUROMATTERS

NEUROSURGE

NEUROMATTERS

NEUROMIX

NEUROMOVEMENT

NEURO-MAG

NEURODANCE

NEURO FLOAT

NEUROPOINT

NEUROSUPREME

ROCKNEURO

NEUROCHOCOLATE

NEURO-TRACE

PHOENIX NEURO

SYNGO DYNAPBV NEURO

NEUROBREW

NEURO SLIDER

NEURO BRIDGE

NEUROLIGHT

NEUROVENT

NEUROAWARENESS

NEUROSCAPE

NEUROGRAM

NEUROLED

NEURO SKIN

NEUROPACE

NEUROCOAT

NEURO-VISION

NEUROWHITE X3

NEUROSTAR

NEUROWAVE

NATIONAL NEURO

NEURO-SELLING

NEUROSENSE

NEURO-WAVE

NEURO RESOURCE GROUP

NEURO-COOL

NEURO OPTIMIZER

NEUROEXPLORER

NEURO-EASE

NEURO FOCUS

NEUROFOCUS

NEUROBASE

NEUROASIS

NEUROCOMPLEX

NEURODRIVEN

NEUROCREATINE

NEUROPERSUASION

NEUROCORE

NEUROLOGIC

NEURO THERAPEUTICS PHARMA

NEUROCONNECT

NEURO-NO 2

NEUROCORE THERAPY

NEURO

NEUROSCOUT

NEUROSPORT

DART NEUROSCIENCE

NEUROBRIGHT

NEUROAMP

NEUROCONNECT

NEURO-Q

NEUROVISION

NEUROCELLULAR

NEUROLINK

NEUROVIGIL

NEUROPAX

NEUROWORKS

NEUROACCESS

NEUROMESH

NEURO FOCUS

THE WORLD'S FIRST AND ONLY NEURO FOCUSING AGENT

NEUROSCORE

VISALUS NEURO

NEUROVISTA

NEURONET

NEUROSLIM

NEUROCOMPLEX

NEUROFORM EZ

NEURODYNAMIC ACTIVATOR

NEUROCELLULAR

NEUROFREEZ

NEUROONE

NEURO SUPPORT HELPS SUPPORT A HEALTHY BRAIN COGNITIVE MOTOR

COMMUNICATION SOCIAL

NEURO COMPLETE HELPS SUPPORT A HEALTHY BRAIN 4 AREAS PEDIATRICIANS CHECK

FOR MOST COGNITIVE MOTOR COMMUNICATION SOCIAL

NEUROFLO

NEUROTIME

NEURO TAP

NEUROADVANCE

NEURO-VASCULAR SUPPORT

NEUROLINK

NEURO-PS

NEURO-BETIC

NEURO FUEL

NEUROMETRIX

NEURO-BOOST

NEURO LOGIC

NEUROPRO

NEURO-ESSENTIALS

NEUROLINE

NEUROSHELL

NEUROPLEX

NEURO-FORCE

NEURO AID HH

NEURO AID

NEUROLITE

NEUROFAX

NEURO LOG

Opposer's Assertion:

6. For years and since prior to the Opposed Application's filing date, NEUROBRANDS adopted and continuously used the Neuro Marks for various forms of supplements and beverages. The Neuro Marks identified in Registration No. 3,609,755; 3,728,338; 3,906,397; and 3,875,430 have been used since at least as early as 2008 for nutritional supplements, dietary supplements, and/or dietary supplemental drinks ("Opposer's Goods"). Made with natural ingredients and packaged with recycled materials, NEUROBRANDS products are formulated by experts in the field to promote health and well-being. NEUROBRANDS products contain essential vitamins, minerals, amino acids and botanicals that are backed by scientific research. By reason of these activities over an extended period of time, the Neuro Marks have become well known to the relevant public as identifying and distinguishing NEUROBRANDS' business and its goods from those of others. NEUROBRANDS, through great expense and quality control, has created, and is the owner of, substantial goodwill, consumer recognition, and reputation in the Neuro Marks for supplements, beverages and their related goods and services.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment. However, the applicant notes the following:

1. Opposer's goods are beverages, not tablets, capsules, or gelcaps
2. Opposer is not well-known. Applicant was not aware of existence of opposer prior to notice of opposition.

Opposer's Assertion:

7. For years and since prior to the Opposed Application's filing date, NEUROBRANDS has invested substantial time, money, and effort in extensively and continuously marketing, advertising, and promoting the Neuro Marks and the goods and services identified by the Neuro Marks. NEUROBRANDS' drinks are sold internationally in numerous countries and have appeared on nationally broadcast morning shows and are well liked by international celebrities, athletes and the public. As a result, the Neuro Marks distinguish NEUROBRANDS' goods and services from those of other retailers and the consuming public has come to associate the Neuro Marks with NEUROBRANDS as the source and sponsor of NEUROBRANDS' goods and services.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment. However, it seems unlikely that members of the public, if they have heard of Neurobrands at all, would associate the hundreds of unrelated trademarks containing the term "neuro" with Neurobrands or its beverage products.

Opposer's Assertion:

8. Upon information and belief, the Opposed Application includes Applicant's intention to use Applicant's Mark for, among others, dietary and nutritional supplements in the same international class (005) as Opposer. Opposer already uses the Neuro Marks in connection

with similar dietary and nutritional supplements, and supplemental drinks. Opposer's Registration No. 3,609,755 for NEUROGASM recites dietary supplements, dietary supplemental drinks and dietary drink mix as the goods. Opposer's Registration No. 3,728,340 for NEUROSONIC recites dietary and nutritional supplements, and dietary supplemental drinks as the goods. Opposer's Registration No. 3,728,338 for NEUROBLISS recites dietary and nutritional supplements, and dietary supplemental drinks as the goods.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment. However, it appears that the opposer does not manufacture or sell similar products, but rather manufactures beverages. The Applicant proposes to market tablets, capsules, and gelcaps containing nutritional supplements under the trademark Neuroflex. Such products would be among hundreds of currently available nutritional supplements containing the prefix "neuro."

Opposer's Assertion:

9. Due to the similarities between the parties' competing marks and goods, consumers are likely to consider Applicant's Goods sold under Applicant's Mark as emanating from or related to NEUROBRANDS and purchase such services as those of NEUROBRANDS, resulting in loss of sales to NEUROBRANDS. Moreover, concurrent use of the Neuro Marks and Applicant's Mark may result in irreparable damage to NEUROBRANDS' reputation and goodwill because consumers are likely to attribute the source of Applicant's Goods to NEUROBRANDS.

Applicant's Response: Deny. We believe that this claim is inaccurate for the following reasons:

1. Hundreds of current trademarks unrelated to the Opposer or its products are currently in use, many for nutritional supplements.
2. Neurobrands' core business is the sale and manufacture of beverages, while the Applicant seeks to manufacture and sell nutritional and cognitive supplements in the form of tablets, capsules, and gelcaps.
3. The applicant seeks to manufacture and sell products containing the Trademark Neuroflex under its own name, Sapien Labs, which will be displayed on all packaging.

Opposer's Assertion:

10. Opposer believes it will be damaged by registration of Applicant's Mark in the Opposed Application because such registration would give Applicant at least a prima facie exclusive right to use Applicant's confusingly similar mark in commerce in the United States, in derogation of Opposer's rights in the Neuro Marks. Because Opposer has priority of use of the Neuro Marks, Applicant will obtain a federal registration to which it is not entitled, and which is inconsistent with Opposer's prior rights.

Applicant's Response: Deny.

1. Hundreds of other marks containing the term "neuro" are currently in use in the United states.
2. The opposer has no claim over the English prefix "neuro," or its use in any trademarks not currently registered to the Opposer.
3. The opposer has priority of use of only those trademarks which it has legally registered. The English language prefix "neuro" was freely and widely in use by the general public long before the Opposer began doing business, and the Opposer has no claim to restrict the use of this prefix, or its inclusion in trademarks registered by the Applicant or other parties.

4. The applicant's trademark is not confusingly similar to Opposer's trademarks, in that the only similarity of the trademark "Neuroflex" to Opposer's trademark is the use of a standard English language prefix, "neuro", which neuroflex also shares with hundreds of existing trademarks not registered to the Opposer.

Opposer's Assertion:

First Basis for Opposition – Priority of Use and Likelihood of Confusion

11. Opposer incorporates by reference paragraphs 1 through 10 as if fully set forth herein.

Applicant's Response: Applicant incorporates by reference its responses to Opposer's assertions 1-10 as if fully set forth herein.

Opposer's Assertion:

12. For years and since prior to the Opposed Application's filing date, Opposer has been and is now using the Neuro Marks in connection with Opposer's Goods.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

13. Opposer's use of the Neuro Marks has been valid and continuous since the date of first use and has not been abandoned.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

14. On information and belief, Applicant's Mark is substantially similar in appearance, sound, connotation and commercial impression to the Opposer's Neuro Marks. On information and belief, the common NEURO element of the parties' marks is identical.

Applicant's Response: Deny. 380 active trademarks unrelated to the Opposer or its products contain the term "Neuro," which is a standard prefix in the English language. Many of these trademarks predate the Opposer's trademarks. Furthermore, the only similarity of the Applicant's trademark to the Opposer's trademarks is the use of the standard prefix "neuro," which both the applicant's and opposer's trademarks share with hundreds of other active trademarks. Thus, there is no similarity in the trademarks other than the use of a standard English language prefix, to which the Opposer has no exclusive claim.

Opposer's Assertion:

15. On information and belief, the goods listed in the Opposed Application are identical or closely related to Opposer's Goods using Opposer's Neuro Marks.

Applicant's Response: Deny. The Opposer manufactures dietary supplemental drinks and beverages. The applicant seeks to manufacture and market tablets, capsules, and gelcaps containing antioxidants, Omega-3 fatty acids, and other products shown in clinical studies to improve cognitive function in humans.

Opposer's Assertion:

16. In view of the similarity of Opposer's Neuro Marks and the Applicant's Mark and the related nature of the respective goods, Applicant's Mark so resembles the Neuro Marks as to be likely, when used in connection with the Applicant's Goods, to cause confusion, to cause mistake, or to deceive the consuming public.

Applicant's Response: Deny. The only similarity of the Applicant's Trademark to the Opposer's trademarks is the English language prefix "neuro-", which by definition relates to the human nervous system, neurology, and cognitive function. Hundreds of products designed to be beneficial to the human nervous system and cognition contain the prefix "neuro." The Opposer does not own this prefix or all such products. Rather, the prefix is in common use, and is included in 380 active trademarks unrelated to the Opposer, many in International class 005. The Opposer does not have exclusive ownership over the concept of neurology or the prefix "neuro" in the context of supplements or in any other context. The Applicant's mark is no more similar to the Opposer's mark than it is to 380 unrelated marks containing the prefix "neuro" that are not owned by the opposer.. Furthermore, due to the Opposer's specialization in beverages, confusion with the Applicant's products is unlikely. Confusion is particularly unlikely because the applicant seeks to clearly print its company name, "Sapien Labs" on the packaging of all products it manufactures.

Opposer's Assertion:

17. By reason of the foregoing, the registration of Applicant's Mark in the Opposed Application is inconsistent and will impair Opposer's prior rights of its marks and Opposer's statutory rights of its registered marks, will cause injury to Opposer, and will damage Opposer's business, reputation and goodwill.

Applicant's Response: Deny. The Opposer only has claim to the specific trademarks registered to it. "Neuro-" is a standard English language prefix, and appears in 380 active trademarks unrelated to the Opposer. Furthermore, the Applicant's trademark bears no similarity to the Opposer's trademarks other than the use of a standard English language prefix, which the Opposer does not own. The Opposer's right to market its beverages under the active trademarks owned by the Opposer are in no way impaired by the hundreds of other trademarks owned by the Applicant, or by the hundreds of other active trademarks which include the prefix "neuro."

Opposer's Assertion:

18. Based on the foregoing, the grant of the registration of Applicant's Mark in the Opposed Application should be denied, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

Applicant's Response: Deny. The Opposer owns its own trademarks, but does not own the English language prefix "neuro-" or other trademarks not registered to the Opposer which contain that prefix. The prefix "neuro-" is widely in use in medicine and science, as well as in business and manufacturing, and its use in the context of human neurology and cognition predates the Opposer or its trademarks. Thus, the Applicant's rights to the use of the "neuroflex" trademark should stand.

Opposer's Assertion:

19. Opposer incorporates by reference paragraphs 1 through 18 as if fully set forth herein.

Applicant's Response: Applicant incorporates by reference its responses to Opposer's assertions 1-18 as if fully set forth herein.

Opposer's Assertion:

20. Opposer enjoys substantial goodwill and consumer recognition built up by Opposer through substantial amounts of use, time and effort in advertising, promotion and sales of goods.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

21. Opposer's Neuro Marks became famous before the filing date of the Opposed Application.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

22. For years and since prior to the Opposed Application's filing date, Opposer has been and is now using the Neuro Marks in connection with the sale of Opposer's Goods.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

23. Opposer's use of its marks has been valid and continuous since its date of first use

and has not been abandoned.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

24. In view of similarity of the respective marks, Applicant's Mark so resembles the commercial impression of the Opposer's Neuro Marks as to be likely to cause association, or to cause dilution by blurring.

Applicant's Response: Deny. The only similarity of the Applicant's Trademark to the Opposer's trademarks is the English language prefix "neuro-", which by definition relates to the human nervous system, neurology, and cognitive function. Products designed to be beneficial to the human nervous system and cognition commonly contain the prefix "neuro." The Opposer does not own this prefix or all such products. Rather, the prefix is in common use, and is included in 380 active trademarks unrelated to the Opposer, many in International class 005. The Opposer does not have exclusive ownership over the concept of neurology or the prefix "neuro" in the context of supplements or in any other context. The Applicant's mark is no more similar to the Opposer's mark than it is to 380 unrelated marks containing the prefix "neuro" that are not owned by the opposer. Furthermore, due to the Opposer's specialization in beverages, Association or dilution by blurring are unlikely. Association and dilution are particularly unlikely because the applicant seeks to clearly print its company name, "Sapien Labs" on the packaging of all products it manufactures. The opposer appears to be a small, niche company manufacturing a very different class of products under an entirely different company name. The only similarity between the opposer's and applicant's trademarks is a prefix that is in common usage in the English language.

Opposer's Assertion:

25. By reason of the foregoing, the registration of Applicant's Mark in the Opposed Application is inconsistent and will impair Opposer's prior rights, will cause injury to Opposer by lessening the capacity of the Neuro Marks to identify and distinguish Opposer's Goods, and will damage Opposer's business, reputation and goodwill.

Applicant's Response: Deny. Hundreds of products are already marketed and sold under active trademarks containing the widely-used prefix "neuro-". Furthermore, the Opposer manufactures beverages under its own company name, While the Applicant seeks to manufacture tablets, capsules, and gelcaps under the "Sapien Labs" company name, using the trademark "neuroflex". Thus, the use of the Applicant's trademark is in no way inconsistent with the Opposer's rights to its own lawfully registered trademarks. The user of the Applicant's trademark for its own cognitive and nutritional tablets, capsules, and gelcaps, marketed in packaging bearing the "Sapien Labs" company name, will in no way cause injury to the Opposer, or to the Opposer's ability to distinguish its own beverages using its own trademarks.

Opposer's Assertion:

26. Based on the foregoing, the grant of the registration of Applicant's Mark in the Opposed Application should be denied based on a likelihood of dilution by blurring the distinctive quality of the Opposer's famous Neuro Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

Applicant's Response: Deny. The Opposer owns its own trademarks, but does not own the English language prefix "neuro-" or other trademarks not registered to the Opposer which contain that prefix. The prefix "neuro-" is widely in use in medicine and science, as well as in business and manufacturing, and its use in the context of human neurology and cognition predates the Opposer or its trademarks. Furthermore,

the Opposer does not have exclusive right to manufacture nutritional supplements, or supplements intended to benefit the human nervous system or cognitive function. Thus, the Applicant's rights to the use of the "neuroflex" trademark should stand.

Opposer's Assertion:

Third Basis for Opposition - Falsely Suggest a Connection

27. Opposer incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

Applicant's Response: Applicant incorporates by reference its responses to Opposer's assertions 1-26 as if fully set forth herein.

Opposer's Assertion:

28. Opposer has been and is now operating using the identity of Neurobrands, Neuro and Neuro Drinks in the area of beverages.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment. However, the applicant does not propose to manufacture beverages.

Opposer's Assertion:

29. Applicant's mark is similar to Opposer's identity.

Applicant's Response: Deny. The only similarity of the Applicant's Trademark to the Opposer's trademarks is the English language prefix "neuro-". This prefix is in common and widespread use, and this common use predates the Opposer and its products. Furthermore, by definition the prefix "neuro-" relates to the human nervous system, neurology, and cognitive function. Products designed to be

beneficial to the human nervous system and cognitive function therefore commonly contain the prefix “neuro” in their trade names. The Opposer does not own this prefix or all such products. Rather, the prefix is in common use, and is included in 380 active trademarks unrelated to the Opposer, many in International class 005. The Opposer does not have exclusive ownership over the concept of neurology or the prefix “neuro” in the context of supplements or in any other context. The Applicant’s mark is no more similar to the Opposer’s mark than it is to 380 unrelated marks containing the prefix “neuro” that are not owned by the opposer.

Opposer’s Assertion:

30. Opposer’s use of its identity has been valid and continuous since Opposer’s date of first use and the relevant class of the public has come to associate Opposer with said identity.

Applicant’s Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer’s Assertion:

31. Opposer is not connected with Applicant’s Goods sold under Applicant’s Mark.

Applicant’s Response: Admit

Opposer’s Assertion:

32. The goods listed in the Opposed Application are closely related to Opposer’s Goods.

Applicant's Response: Deny. The Applicant proposes to manufacture nutritional supplements containing ingredients demonstrated to improve memory, attention, and/or cognition in studies. The applicant currently seeks to manufacture these supplements will be manufactured in the form of tablets, capsules, and gelcaps. The Opposer currently manufactures beverages. These products are thus not closely related.

Opposer's Assertion:

33. Opposer's identity is of sufficient fame or reputation that a connection with Opposer is presumed from the use of Applicant's Mark on Applicant's Goods.

Applicant's Response: Deny. The opposer is not a well-known manufacturer of cognitive supplements in the form of tablets, capsules, or gelcaps. Furthermore, the opposer is not the only or best-known manufacture of nutritional supplements. Finally, Applicant's products will be manufactured and packaged under the Applicant's company name, "Sapien Labs," and all of the Applicant's products will be packaged in packaging containing this name. There is no evidence that Applicants goods are likely to be associated with the Opposer. In fact, the applicant actively seeks to build a unique brand identity, offering unique cognitive support products unmatched by any other manufacturer.

Opposer's Assertion:

34. In view of the similarity of Applicant's Mark with Opposer's identity, and in view of the related nature of the respective uses, the Opposed Application consists of and comprises matter which may falsely suggest a connection with Opposer, under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

Applicant's Response: Deny. The only similarity of the Applicant's Trademark to the Opposer's trademarks is the English language prefix "neuro-". This prefix is in common and widespread use, and

this common use predates the Opposer and its products. Furthermore, by definition the prefix “neuro-“ relates to the human nervous system, neurology, and cognitive function. Products designed to be beneficial to the human nervous system and cognitive function therefore commonly contain the prefix “neuro” in their trade names. The Opposer does not own this prefix or all such products. Rather, the prefix is in common use, and is included in 380 active trademarks unrelated to the Opposer, many in International class 005. The Opposer does not have exclusive ownership over the concept of neurology or the prefix “neuro” in the context of supplements or in any other context. The Applicant’s mark is no more similar to the Opposer’s mark than it is to 380 unrelated marks containing the prefix “neuro” that are not owned by the opposer.

Furthermore, the Applicant’s products are differentiated from the Opposer’s products in the following ways:

1. The Opposer manufactures beverages, while the applicant seeks to manufacture cognitive supplements in the form of tablets, capsules, and/or gelcaps.
2. Applicant’s products will be manufactured and packaged under the Applicant’s company name, “Sapien Labs,” and all of the Applicant’s products will be packaged in packaging containing this name.
3. Numerous other nutritional and cognitive supplements unrelated to the opposer are currently available under trademarks containing the prefix “neuro-“

There is thus no evidence that Applicants goods are likely to be associated with the Opposer. In fact, the applicant actively seeks to build a unique brand identity, offering unique cognitive support products unmatched by any other manufacturer.

Opposer’s Assertion:

35. The filing fee to oppose Applicant's mark is being submitted herewith.

Applicant's Response: The applicant is without knowledge or information sufficient to form a belief as to the truth of this averment.

Opposer's Assertion:

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's Mark and respectfully requests that the opposition be sustained and that registration be refused.

Applicant's Response: WHEREFORE, Applicant believes there is no significant similarity between Applicant's Mark and Opposer's trademarks, beyond the use by both of a widely-used English language prefix which is also used in 380 other, unrelated trademarks, and whereas the Applicant believes that there is no evidence that the Applicants products, marketed under the Applicant's company name, will be in any way confused with the Opposer's products, the Applicant believes that the Opposer's claims are entirely without merit, and the Applicant respectfully requests that the opposition be dismissed.

Date: January 27, 2014

Respectfully submitted,
/Michael Fisher/
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