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

Proceeding	91220971
Party	Defendant Nutrishape, LLC
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Submission	Answer
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Signature	/Jon A. Troyer/
Date	04/20/2015
Attachments	Nutrishape_Answer_91220971 Opposition_FINAL.pdf(44928 bytes )



6. Insofar as paragraph 6 states conclusions of law, no answer is required; as to the remaining, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 6 of the Notice of Opposition, and therefore denies same.
7. Deny the allegations in numbered paragraph 7 of the Notice of Opposition.
8. Deny the allegations in numbered paragraph 8 of the Notice of Opposition.
9. Whether Opposer's NUTRISHOP marks have become famous is a conclusion of law to which no answer is required; as to the remaining, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9 of the Notice of Opposition, and therefore denies same.
10. Insofar as paragraph 10 states conclusions of law, no answer is required; as to the remaining, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10 of the Notice of Opposition, and therefore denies same.
11. Deny the allegations in numbered paragraph 11 of the Notice of Opposition.
12. Insofar as paragraph 12 states conclusions of law, no answer is required; as to the remaining, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 12 of the Notice of Opposition, and therefore denies same.
13. Deny the allegations in numbered paragraph 13 of the Notice of Opposition.

#### **ANY REMAINING CLAIMS**

14. Applicant denies each and every allegation in the Notice of Opposition not expressly admitted herein, including any claims raised in the prayer for relief.

#### **FIRST DEFENSE** **(Acquiescence, Estoppel)**

15. At the time of the filing of the applications which resulted in U.S. Trademark Registration Nos. 3,018,521 and 3,875,719 (the alleged Opposer's marks), a valid U.S. Trademark Registration existed for the word mark "NUTRISHAPE" (No. 1,879,940), in Int'l. Class 5 (U.S. Class 18).
16. If Opposer's ownership of the marks it alleges is indeed true, then in filing the applications which resulted in registration of U.S. Trademark Registration Nos. 3,018,521 and 3,875,719, the de facto position taken by Opposer at that time would be that its marks did not create a likelihood of confusion with the then existing NUTRISHAPE word mark.
17. The Notice of Opposition is therefore barred by the equitable doctrines of acquiescence and estoppel.

**SECOND DEFENSE**  
**(Prior Registration)**

18. At the time of the filing of the applications which resulted in U.S. Trademark Registration Nos. 3,018,521 and 3,875,719 (the alleged Opposer's marks), a valid U.S. Trademark Registration existed for the word mark "NUTRISHAPE" (No. 1,879,940), in Int'l. Class 5 (U.S. Class 18).
19. The Notice of Opposition is therefore barred due to the prior existing registration of the NUTRISHAPE word mark, which is identical in sound and spelling to Applicant's design mark at issue.

**ADDITIONAL DEFENSES**

20. Applicant reserves the right to add additional defenses that may become apparent during the pendency of this Opposition.

WHEREFORE, Applicant requests that the Opposition be dismissed with prejudice, and that Applicant be granted such other and further relief as is just and equitable.

Respectfully submitted,

/Jon A. Troyer/

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Date: April 20, 2015\*

*Attorney for Applicant Nutrishape, LLC\*\**

\* Pursuant to Trademark Rule 2.196, this answer is timely filed.

\*\* The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

