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

Proceeding	91223820
Party	Plaintiff Shaklee Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Shaklee Corporation,)	
)	
Opposer/Counterclaim)	OPPOSER’S ANSWER TO
Respondent,)	APPLICANT’S COUNTERCLAIM
)	
v.)	Opposition No. 91223820
)	(Application Ser. No. 86/128470)
)	
Mannatech, Incorporated,)	
)	
Applicant/Counterclaim)	
Petitioner.)	

OPPOSER’S ANSWER TO APPLICANT’S COUNTERCLAIM

Opposer, Shaklee Corporation (“Shaklee”) answers the Counterclaim of Applicant, Mannatech, Incorporated (“Mannatech”) as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Registrant admits that Exhibit A attached to the Counterclaim is the same as a specimen of use for YOUTH filed by Registrant and that Registrant filed a specimen of use along with a Combined Sections 8 & 15 Declaration on November 7, 2013 – that the United States Patent and Trademark Office accepted as proving use of the mark YOUTH.

6. Registrant admits that Exhibit A attached to the Counterclaim shows a page that appears to be from Registrant’s website for ordering Registrant’s products. However, Registrant cannot be sure that Exhibit A is truly from its website.

7. Registrant admits that Exhibit A attached to the Counterclaim advertises Registrant's product called ENFUSELLE Instant Firming Serum and it also shows use of YOUTH on the goods identified in Registration No. 3,347,631 for YOUTH. Registrant denies that Exhibit A attached to the Counterclaim sells Registrant's product called ENFUSELLE Instant Firming Serum as a specimen does not sell a product.

8. Registrant denies that ENFUSELLE is used to obtain the alleged conditions. ENFUSELLE is a mark for a product, not a product itself.

9. Registrant denies that ENFUSELLE is a product. ENFUSELLE is a mark for a product.

10. Registrant admits that Registrant owns the domain name Shaklee.com.

11. Registrant admits that it owns a website for which a page is http://www.shaklee.com/us/en/shop/healthybeauty/enfuselleskincare/product-_p_instant-firming-serump?g=specialtytreatments. Registrant admits that it controls advertising on http://www.shaklee.com/us/en/shop/healthybeauty/enfuselleskincare/product-_p_instant-firming-serump?g=specialtytreatments. Registrant is without sufficient information to admit or deny that it "sales of ENFUSELLE on the following website ..." as that allegation is not comprehensible. Registrant denies that Exhibit B demonstrates alone that it "owns, controls advertising, and sales of ENFUSELLE" on http://www.shaklee.com/us/en/shop/healthybeauty/enfuselleskincare/product-_p_instant-firming-serump?g=specialtytreatments as Exhibit B appears to just be a screen capture from the website that does not necessarily demonstrate what is alleged.

12. Registrant admits that the product shown in Exhibit B to the Counterclaim is offered for sale under the mark ENFUSELLE®, and notes that it would be incomplete to not also

admit that the product shown in Exhibit B to the Counterclaim is offered for sale also under the mark YOUTH® as shown in Exhibit B.

13. Registrant admits that Exhibit C appears to be packaging for Registrant's ENFUSELLE® marked product.

14. Registrant admits that Exhibit C appears to be packaging for Registrant's ENFUSELLE® marked product, which is shown also in Exhibits A and B, and which is also marked YOUTH®.

15. Registrant denies that it "does not use the term YOUTH as a trademark." Registrant denies that ENFUSELLE is a product. ENFUSELLE is a mark for a product.

16. The reference to a "mark for ENFUSELLE" makes this allegation nonsensical. A mark is a word or device etc. for goods. It is not just a word by itself. Accordingly, Registrant lacks information sufficient to admit or deny this allegation.

17. Admitted.

18. It is not clear how an Exhibit that is just a piece of paper can demonstrate use of a mark for goods. Exhibit C appears to be a copy of packaging and may accordingly show use of the mark. But Registrant cannot be sure. As such, Registrant lacks information sufficient to admit or deny this allegation.

19. Registrant denies that the word YOUTH was formerly owned by Reverta Health Solutions, LLC. A company does not own a word, it might own a word for goods or services, but not the word itself. Registrant admits that the word YOUTH was formerly used by Reverta Health Solutions, LLC. Registrant lacks sufficient information to know if Reverta Health Solutions, LLC is currently a Pennsylvania limited liability company.

20. Registrant denies that the word YOUTH was formerly owned by Reverta Health Solutions, LLC. A company does not own a word, it might own a word for goods or services,

but not the word itself. Registrant lacks sufficient information to know if Reverta Health Solutions, LLC is currently a Pennsylvania limited liability company.

21. Registrant lacks sufficient information to know if Exhibit D attached to the Counterclaim is what the Counterclaim alleges it to be.

22. The allegation in Paragraph 22 is non-sensical as it states that “[the] specimen of use for EXHIBIT D...” Of course there is no such thing as a specimen of use for an Exhibit. Accordingly, Registrant lacks sufficient information to respond to this allegation.

23. Denied. The United States Patent and Trademark Office has even confirmed that Shaklee uses YOUTH® as a trademark.

24. This allegation is that “the Registration” shows use of YOUTH on product packaging and that Registrant does not so use YOUTH. A registration never shows use of a mark. Denied.

25. Denied.

26. Admitted.

27. Admitted.

28. The allegation of Para. 28 is not understandable. Registrant lacks sufficient information to admit or deny it.

29. The allegation of Para. 29 is not understandable. Registrant lacks sufficient information to admit or deny it.

30. Admitted.

31. Registrant lacks sufficient information to admit or deny the allegation of Paragraph 31.

32. A specimen of use does not demonstrate use of a trademark registration. A specimen of use is meant to demonstrate use of a mark that is registered. Denied.

33. Denied. ENFUSELLE is a mark for a product. Thus, Exhibit E is not product packaging, product guides and photos of the product ENFUSELLE.

34. Registrant admits the Exhibit E, alleged to be the specimens for the registration for the mark WATCH YEARS DISAPPEAR IN MINUTES, do not appear to show use of the mark YOUTH.

35. Registrant admits that it does not use the YOUTH registrations in connection with ENFUSELLE or WATCH YEARS DISAPPEAR IN MINUTES in Exhibit E which is alleged to be copies of the specimens for the registration for the mark WATCH YEARS DISAPPEAR IN MINUTES.

36. Registrant admits that it was not using the YOUTH registrations in connection with ENFUSELLE or WATCH YEARS DISAPPEAR IN MINUTES in the July 10, 2014, specimen of use in Exhibit E which is alleged to be copies of the specimens for the registration for the mark WATCH YEARS DISAPPEAR IN MINUTES.

37. Denied.

38. Denied.

39. Registrant admits that it uses the term YOUTH and denies the remainder of this allegation.

40. Registrant admits that it does not use YOUTH on the packaging for products sold under the ENFUSELLE trademark as a trademark, but reminds that placing a mark on packaging is not the only way to use a trademark on goods and that United States Code §1127 states that use of a mark on goods includes the mark being “placed in any manner on ... displays associated [with the goods].”

41. Admitted.

42. Admitted.

43. Admitted.

44. Registrant denies that Dates of First Use were cited as June 2, 2015. Registrant denies that it gave multiple reasons for extension in a single request. Registrant admits the remainder of this paragraph.

45. Denied. An application does not submit a Specimen of Use.

46. Registrant admits that Exhibit F to the Counterclaim pictures an ENFUSELLE marked skin care product. Registrant admits that the ENFUSELLE marked skin care product shown in Exhibit F to the Counterclaim that pictures an ENFUSELLE marked skin care product that might bear some similarities to the product marked with YOUTH and ENFUSELLE shown in Exhibit A.

47. Denied. Exhibit A and Exhibit F are attached to the Counterclaim. Exhibits to the Counterclaim were not submitted as samples of use of YOUTH for an “anti-age” product.

48. Registrant denies that its YOUTH Registrations are identical. Registrant admits that the goods identified in its registrations for its marks YOUTH bear some similarities. Shaklee denies that the 4,777,591 Registration only claims a first use date of June 2, 2015.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Registrant denies that it filed false Sections 8 & 15 Affidavits. Registrant admits that Exhibit A shows Shaklee’s ENFUSELLE Instant Firming Serum Item Number 32548 and also that Exhibit A shows use of the mark YOUTH.

55. Exhibit A does not demonstrate a website. At most Exhibit A shows a portion of a webpage. Accordingly, Registrant denies this allegation.

56. Exhibit G does not demonstrate a website. At most Exhibit G shows a portion of a webpage. Exhibit G does not show the entire webpage at <http://www.shaklee.com/us/en/products.php?sku=32548>. Accordingly, Registrant denies that Exhibit G demonstrates a website as it appeared on September 27, 2013.

57. Registrant is unsure what Counterclaimant means by “demonstrates.” Registrant admits that Exhibit G shows a product bearing the mark ENFUSELLE.

58. Registrant is unsure what Counterclaimant means by “demonstrate.” Registrant admits that Exhibit A shows a product bearing the mark ENFUSELLE and that Exhibit G shows a product bearing the mark ENFUSELLE. Both Exhibits admittedly refer to product number, namely 32548.

59. This allegation presupposes that there is an entire website for ENFUSELLE marked instant firming serum item number 32548. Registrant denies that. There is a webpage within the greater Shaklee website for that particular product. Registrant lacks sufficient information to admit or deny that on September 27, 2013, it was not using its trademark YOUTH on its webpage for ENFUSELLE marked instant firming serum item number 32548.

60. It is not clear whether “Registered Mark” refers to the mark registered in Shaklee’s Registration 4,777,591 or the mark registered in Shaklee’s Registration 3347631. However, since the allegation refers to an assignment from Reverta Health Solutions LLC, Shaklee assumes that Mannatech means to refer to the mark registered in Shaklee’s Registration 3347631. Shaklee denies that the assignment was signed July 1, 2009.

61. Registrant denies that it “allowed” three similar applications to abandon for failure to file a Statement of Use in January 2013. Registrant is without sufficient information to

admit or deny that it submitted a specimen allegedly demonstrating use of the mark on the same goods in November 2013 as it is unclear what is meant by “the mark” or the “same goods.”

62. Registrant denies that Application 85/802,878 is identical to the Registered Mark. Registrant denies that it claimed a first use date in Application 85/802,878. Registrant admits that June 2, 2015, is over 5 years and 11 months from the Assignment of the mark of Registration 3347631 from Reverta Health Solutions, LLC to Shaklee Corporation.

63. Denied.

64. Denied.

65. Denied.

66. Registrant denies that the Sections 8 & 15 Affidavit was false. Registrant admits that the specimen submitted to support filing the Sections 8 & 15 Affidavit is a point of sale document for Registrant’s ENFUSELLE marked product -- and also shows its use of YOUTH as a mark. Registrant notes that the allegation regarding whether a *bona fide* use of the YOUTH Registration is shown is irrelevant. Use of a registration does not matter. What matters is use of a mark that is registered. Assuming that Counterclaimant meant to refer to a specimen showing use of a mark, and not of a registration, Registrant denies that the specimen submitted to support filing the Sections 8 & 15 Affidavits does not show a *bona fide* use of the mark of the YOUTH Registration in connection with anti-aging cream and anti-wrinkle cream.

67. Registrant denies that the Sections 8 & 15 Affidavit for Registration 4,777,591 was false. Registrant admits that the specimen submitted to support filing the Sections 8 & 15 Affidavits is a point of sale document for Registrant’s ENFUSELLE marked product -- and also shows its use of YOUTH as a mark. Registrant notes that the allegation regarding whether a *bona fide* use of the YOUTH Registration is shown is irrelevant. Use of a registration does not matter. What matters is use of a mark that is registered. Assuming that Counterclaimant meant

to refer to a specimen showing use of a mark, and not of a registration, Registrant denies that the specimen submitted to support filing the Sections 8 & 15 Affidavits does not show a *bona fide* use of the mark of the YOUTH Registration in connection with cosmetic sunscreen preparations; cosmetics; non-medicated skin care preparations; non-medicated toiletries.

68. Denied.

Affirmative Defenses

1. Mannatech has been aware of Shaklee's mark YOUTH for skin care goods since at least as early as May 2013.

2. In that regard, Mannatech hired a former Shaklee distributor, Mr. Bo Short, in May 2013.

3. On information and belief, Mr. Short was familiar with Shaklee's mark YOUTH®.

4. Mannatech surely became aware of Shaklee's Registration 3,347,631 for the mark YOUTH® that it seeks to cancel on or about December 9, 2013.

5. In that regard, Shaklee sent a letter to Mannatech dated December 9, 2013, which noted and included a copy of U.S. Registration No. 3,347,631 for YOUTH® for an anti-aging cream and anti-wrinkle cream. On information and belief, Mannatech received that letter on or about December 9, 2013.

6. Mannatech responded to Shaklee's letter on December 19, 2013, arguing in part that Shaklee's product for which it uses YOUTH® "is not called 'YOUTH'."

7. Mannatech did not seek to cancel to Shaklee registration for YOUTH in 2013 or 2014.

8. Shaklee's Registration 3,347,631 for the mark YOUTH® was noted in a Letter of Protest Memorandum sent to the Examiner of Mannatech's Application No. 86/128,507 by the United States Patent and Trademark Office dated January 23, 2014.

9. On information and belief, Mannatech became aware of the Letter of Protest Memorandum by at least on or about March 14, 2014.

10. Mannatech's 10-K for the year ended December 31, 2012, that it submitted to the Securities and Exchange Commission, lists Shaklee as a competitor to Mannatech.

11. Shaklee's Registration 3,347,631 for the mark YOUTH® was also cited against registration of Mannatech's application to register UTH, No. 86128507, by the United States Patent and Trademark Office in an Office action dated March 14, 2014.

12. Shaklee's Registration 3,347,631 for the mark YOUTH® was also cited against registration of Mannatech's application to register UTH, No. 86128470, by the United States Patent and Trademark Office in an Office action dated March 14, 2014.

13. Shaklee's Application No. 85802878 for the mark YOUTH® was also cited against registration of Mannatech's application to register UTH, No. 86128470, by the United States Patent and Trademark Office in an Office action dated March 14, 2014.

14. On information and belief, Mannatech received the Office actions dated March 14, 2014, citing Shaklee's Registration 3,347,631 and Application No. 85802878 for the mark YOUTH® in Mannatech's applications 86128507 and 86128470 on or about March 14, 2014.

15. In response to the Office action dated March 14, 2014, in Mannatech's application 86128507, Mannatech argued on September 4, 2014, that "[t]he product noted in the goods for the registration itself is not called 'YOUTH'."

16. In response to the Office action dated March 14, 2014, in Mannatech's application 86128470, Mannatech argued on September 10, 2014, that "[t]he product noted in the goods for the registration itself is not called 'YOUTH'."

17. In response to the Office action dated March 14, 2014, in Mannatech's application 86128470, Mannatech argued on September 10, 2014, that "With respect to pending Application No. 85/802,878 for YOUTH (hereafter "Shaklee's Pending Application"), Applicant requests that the Examiner consider the same arguments made for cited Registration No. 3,347,631 for YOUTH."

18. Mannatech did not file a letter of protest in Shaklee's Application No. 85802878 for YOUTH in 2013 or 2014.

19. Mannatech did not bring a proper claim for cancellation of Shaklee's Registration 3,347,631 and for the mark YOUTH® until November 18, 2015 (in another matter) and did not bring the current claim for cancellation until November 20, 2015.

20. Mannatech bases its current cancellation ground of abandonment on the same argument that it made on December 19, 2013, i.e., that Shaklee allegedly does not use YOUTH and allegedly has abandoned YOUTH.

21. Registrant has known of its alleged basis for this Cancellation since at least as early as December 19, 2013.

22. Registrant did not bring this Cancellation until November 20, 2015, despite knowing of its alleged basis for this Cancellation since at least as early as December 19, 2013.

23. Although Mannatech considers Shaklee a competitor, and knew of its alleged basis for this Cancellation since at least as early as December 19, 2013, Mannatech did not bring this Cancellation until 23 months later on November 20, 2015.

24. Mannatech did bring a Cancellation against Shaklee's Registration 3,347,631 in May 2015, but that Cancellation was dismissed by Order of the Board on October 26, 2015 (with leave to replead).

25. During the period that Mannatech was aware of Shaklee's use of the mark YOUTH®, but had not sought to cancel Shaklee's registration, Shaklee filed a Statement of Use in Application 85802878 on June 4, 2015, (which matured into Registration 4777591 on July 21, 2015). Thus, Shaklee took action regarding its YOUTH® mark and has been prejudiced by Mannatech's inaction.

26. Accordingly, Mannatech's counterclaim for cancellation of Shaklee's Registrations 3,347,631 and 4,777,591 is barred by laches and/or acquiescence.

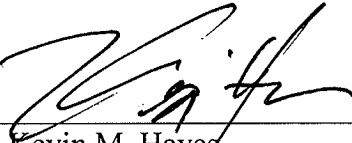
WHEREFORE, Shaklee requests that the Cancellation be dismissed.

Dated: January 7, 2016.

Respectfully submitted,

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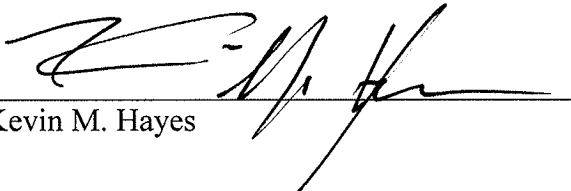
KLARQUIST SPARKMAN, LLP

By 
Kevin M. Hayes
Oregon State Bar No. 01280

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 7, 2016, a true copy of the foregoing **OPPOSER'S ANSWER TO APPLICANT'S COUNTERCLAIM** was served on Applicant by first class mail, postage prepaid, to:

Sanford E. Warren, Jr.
Warren Rhoades LLP
1212 Corporate Drive, Suite 250
Irving, Texas 75038


Kevin M. Hayes