

ESTTA Tracking number: **ESTTA818120**

Filing date: **05/02/2017**

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

Proceeding	91233688
Party	Defendant BodyVega Nutrition, LLC
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Attachments	Answer_Opposition_No.91233688.pdf(5155651 bytes)

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

In the Matter of:

Trademark Application Serial No. 87/021,560

Published in the *Official Gazette* November 29, 2016

SEQUEL NATURALS, ULC,

Opposer,

v.

BODYVEGA NUTRITION, LLC

Applicant.

Opposition No. 91233688

Mark: **BODYVEGA**

Serial No. 87/021,560

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES AGAINST OPPOSITION**

Applicant, Bodyvega Nutrition, LLC (“Applicant”), for its answer to the Notice of Opposition filed by Sequel Naturals, ULC (“Opposer”) against application for registration of Applicant’s trademark “BODYVEGA”, Serial No. 87/021,560 filed May 02, 2016, and published in the *Official Gazette* of November 29, 2016 (the “Mark”), pleads and avers as follows:

1. Answering paragraph 1, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.
2. Answering paragraph 2, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.
3. Answering paragraph 3, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.

4. Answering paragraph 4, Applicant admits the allegations thereof as to the ownership, registration date and international classes of U.S. Trademark Application Serial No.s as cited in the table, but denies the allegations otherwise.

5. Answering paragraph 5, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.

6. Answering paragraph 6, Applicant admits the allegations with respect to the U.S. Trademark Application Serial No. 3633434 having been registered and renewed under an incontestable status pursuant to 15 U.S.C. §§ 1065 and 1115(b), but denies knowledge and information sufficient to admit or deny whether such registration and renewal status was properly granted and maintained.

7. Answering paragraph 7, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.

8. Answering paragraph 8, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof.

9. Answering paragraph 9, Applicant admits the allegations with respect to Applicant's filing of U.S. Trademark Application Serial No. 87/021,560 for the BODYVEGA mark, but denies knowledge and information sufficient to admit or deny whether such consent or permission of Opposer was required.

10. Answering paragraph 10, Applicant denies knowledge and information sufficient to admit or deny all the preceding allegations made by Opposer, and therefor denies the same, except for any admissions made in answering paragraphs 4, 6 and 9.

11. Answering paragraph 11, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof, and therefor denies the same.

12. Answering paragraph 12, Applicant denies knowledge and information sufficient to admit or deny the allegations thereof, and therefor denies the same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Applicant affirmatively alleges that Opposer fails to state a claim upon which relief can be granted, and in particular fails to assert any evidence or grounds sufficient to allege that Applicant's registration of the Mark would in any manner cause damages to Opposer's business interests associated with any one of their current "VEGA Marks."

Second Affirmative Defense

Applicant affirmatively alleges that "VEGA" is a word, suffix and/or prefix used in numerous registered trademarks for various goods and services, which registrations and usages are not owned by or connected to Opposer.

Third Affirmative Defense

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.

Fourth Affirmative Defense

Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark(s) of Opposer are not confusingly similar.

Fifth Affirmative Defense

Alternatively, Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's Mark and Opposer's alleged trademark(s) are not confusingly similar. Any similarity, if at all, between Applicant's Mark and Opposer's alleged trademark(s) is restricted to that portion of the Mark consisting of the word "vega", which is not distinctive. As a result, under the antidissection rule that requires potentially conflicting marks to be compared as a whole or as they are viewed by consumers in the marketplace, any secondary meaning Opposer may have in its alleged "VEGA marks" are narrowly circumscribed to the exact trademark(s) alleged and does not extend to any other feature of the trademarks beyond the word "vega."

Sixth Affirmative Defense

Applicant alleges that the Goods & Services of Applicant's Mark covering "Fish oil supplements; Amino acid supplements" in Class 5 differ substantially from those Goods associated with Opposer's mark(s) as cited in the table presented in Paragraph 4, whose description(s) collectively fail to expressly include or claim either "fish oil" or "amino acid" supplements, despite other supplements being specifically named so as to provide notice of, and sufficiently describe, the scope and extent of the types of supplements claimed. Accordingly, the failure of Opposer's

marks to specifically and expressly include either “fish oil” or “amino acid” supplements in the listing of claimed Goods & Services, while many other specific types of supplements are in fact included, acts to constructively limit the scope of Opposer’s Goods & Services, and render Applicant’s Mark as independent and distinct from Opposer’s collective marks, as Applicants two specific supplements are noticeably absent from, and are therefore excluded from the list(s) of “nutritional supplements” in the Goods & Services claimed by Opposer in every one of the cited “VEGA Marks” presented therein.

Seventh Affirmative Defense

Applicant further alleges that the Goods & Services of the Mark covering “On-line wholesale and retail store services featuring dietary and nutritional supplements, fish oil supplements and amino acid supplements” in Class 35, differ substantially from those Goods cited in the table presented in Paragraph 4 by Opposer, whose categories of Goods in Column 4 are limited to international classes 5, 29, 30 and 32, and therefore, that the Goods & Services of the Mark in Class 35 are independent of and therefore excluded from the list(s) of Goods & Services claimed by Opposer in all of the cited “VEGA Marks” presented therein. Even if overlap of “dietary and nutritional supplements” is found despite an independent Class 35 being claimed, an amendment to limit Applicant’s Goods to “fish oil supplements and amino acid supplements” would be sufficient to fully distinguish Applicant’s Goods from those claimed Goods of Opposer(s) collective marks.

Eighth Affirmative Defense

Applicant has been using the Mark and developing consumer recognition and goodwill

therein since at least November 29, 2013, such use being open, notorious and known to Opposer as the Mark was used in connection with online retail sales of Applicant's products via the internet and on Amazon.com, both of which are accessible, open and searchable to the general public via the world wide web, and therefore were known and/or discoverable to Opposer from the time of first use. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, and on which inaction Applicant has relied to its detriment. Opposer's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

Ninth Affirmative Defense

Applicant affirmatively alleges that it does not sell or plan to sell any of the Goods as named and described in association with any of the specific Goods associated with any one of the collective "VEGA marks" presented in paragraph 4.

Tenth Affirmative Defense

As an affirmative defense of unclean hands, applicant alleges that Opposer is not entitled to relief because they have engaged in a practice of trademark bullying, namely using its trademark rights to harass and intimidate another business beyond what the law might reasonably be interpreted to allow. Opposer has previously opposed a number of applications (seven) where the grounds of the opposition appear dubious, weak, or exaggerated. Opposer is attempting to unfairly raise the cost of applications by filing this and other seemingly overreaching oppositions in an effort to reduce the number of "VEGA marks" registered. Applicant is a small business that is harmed by Opposer's litigation tactics, including (a) attempting to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to the

trademark owner, and (b) seeking to interfere with Applicant's desire to participate in the marketplace by offering non-competing goods. Opposer's opposition thus appears to be objectively baseless and brought subjectively for an improper purpose, i.e., to burden the other side with litigation costs and to block registration for no legitimate basis, or failing that, to delay registration.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board deny the Opposition, and permit registration of Applicant's proposed mark.

Respectfully submitted,

BODYVEGA, LLC

Dated: May 2, 2017



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES AGAINST OPPOSITION** has been served on the following by e-mailing an electronic copy and by mailing a physical copy on May 2, 2017, via First Class Mail, postage prepaid, to counsel of record for Opposer at the following address:

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By: /Michael J. Petrin/
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