ESTTA Tracking number: **ESTTA876857**
Filing date: **02/12/2018**

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

Proceeding	91238743
Party	Defendant STPCA
Correspondence Address	STPCA STPCA 9250 JERONIMO ROAD IRVINE, CA 92618 Email: michael.tsai@sunten.com, jerry@primalhair.com
Submission	Answer
Filer's Name	Theodore S. Lee
Filer's email	tlee@inhouseco.com, theodore.s.lee@gmail.com
Signature	/Theodore S. Lee/
Date	02/12/2018
Attachments	Primal_Hair_TTAB_Answer_to_Opposition_91238743.pdf(44045 bytes) Primal_Hair_TTAB_Answer_to_Opposition_91238743 - POS - executed.pdf(47705 bytes)

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

In re: Application Serial No. 87/396,163 Primal Elements, Inc., OPPOSER v. STPCA dba Sun Ten Laboratories, APPLICANT	Opposition No. 91238743 Mark: Primal Hair

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant STPCA dba Sun Ten Laboratories ("Applicant"), owner of Federal Trademark Application Serial No. 87/396,163 for the mark PRIMAL HAIR (hereinafter "Applicant's Mark"), by and through its undersigned attorney, Theodore S. Lee, Inhouse Co. Law Firm, submits its Answer to the Notice of Opposition ("Opposition") filed on January 3, 2017 by Primal Elements, Inc. as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 1 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 2 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 3 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 4 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 5 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 6 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 7 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 8 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 9 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

10. In response to paragraph 10, Applicant admits that Applicant seeks to register the mark PRIMAL HAIR in International Class 005, for food supplements for promoting hair growth; herbal supplements for natural hair growth function and hair loss due to aging; nutraceuticals for use as a dietary supplement for reducing and/or preventing hair loss and hair regrowth. Applicant also admits that Said Application was published for opposition in the Official Gazette on September 5, 2017 at TM 2349, but otherwise denies each and every allegation contained therein.

11. Paragraph 11 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent that further response is necessary, Applicant denies each and every allegation in Paragraph 11 of the Notice of Opposition.

12. Paragraph 12 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent that further response is necessary, Applicant denies each and every allegation in Paragraph 12 of the Notice of Opposition. Furthermore, Applicant specifically denies Opposer's allegation that it will be damaged by the registration of Applicant's U.S. Application Serial No. 87/396,163 for the PRIMAL HAIR trademark.

AFFIRMATIVE DEFENSES

FURTHERMORE, Applicant sets forth the following in support of Applicant's position and in defense to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts of lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

13. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

14. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial No. 87/396,163 for the PRIMAL HAIR trademark.

THIRD AFFIRMATIVE DEFENSES
LACK OF LIKELIHOOD OF CONFUSION

15. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed marks and has a distinct commercial impression from Opposer's claimed marks.

16. Applicant's registration of Applicant's Mark does not create a likelihood of confusion among consumers that Applicant's goods are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's Mark creates a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that:

1. The Trademark Trial and Appeal Board dismiss the Opposition with prejudice;
2. The Applicant's U.S. Application Serial No. 87/396,163 be allowed to register;
3. The Applicant be granted any further reasonable and appropriate relief.

Dated: February 12, 2018

Respectfully submitted,

By: /Theodore S. Lee/

Theodore S. Lee, Esq., SBN 281475
InHouse Co.
324 S. Diamond Bar Blvd, #318
Diamond Bar, CA 91765
Tel: (626) 400-6680
Fax: (626) 380-1308
Tlee@inhouseco.com

Attorney for Applicant
STPCA dba Sun Ten Laboratories

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re: Application Serial No. 87/396,163 Primal Elements, Inc., OPPOSER v. STPCA dba Sun Ten Laboratories, APPLICANT	Opposition No. 91238743 Mark: Primal Hair

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on Opposer, Primal Elements, Inc., through its Attorney Stetina Brunda Garred & Brucker, by forwarding said copy on February 2, 2018, via email:

Kit M. Stetina
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
opposition@stetinalaw.com
kstetina@stetinalaw.com

Dated: February 12, 2018

Respectfully submitted,

By: /Theodore S. Lee/

Theodore S. Lee, Esq., SBN 281475
InHouse Co.
324 S. Diamond Bar Blvd, #318
Diamond Bar, CA 91765
Tel: (626) 400-6680
Fax: (626) 380-1308
Tlee@inhouseco.com

Attorney for Applicant
STPCA dba Sun Ten Laboratories