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Filing date: **11/18/2019**

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

Proceeding	91251393
Party	Defendant Southern Tier Hemp, LLC
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Date	11/18/2019
Attachments	Answer to Notice of Opposition.pdf(234770 bytes)

**United States Patent and Trademark Office
Trademark Trial and Appeal Board**

Our Ref: TT194855

In re Trademark Application
Trademark: NATIVA
Serial No. 87477239
Filed: June 6, 2017
Amended Filing Date: December 20, 2018

Cannara Biotech, Inc.

Plaintiff/Petitioner,

- against -

Southern Tier Hemp, LLC,

Defendant/Applicant.

Opposition No. 91251393

ANSWER TO AMENDED NOTICE OF OPPOSITION [Doc ID 4]

Applicant Southern Tier Hemp, LLC (“Applicant”), by and through its counsel, Gordon E. R. Troy, Esq., hereby answers the Notice of Opposition of Cannara Biotech, Inc. (“Petitioner”) and the allegations contained therein, and alleges its affirmative defenses as follows:

1. Applicant admits that Opposer’s Trademark Application Serial No. 88168737 (the “’737 Application”) says what it says and denies any inconsistency between the ‘737 Application and paragraph 1 of the Amended Notice of Opposition (hereinafter the “Notice”).
2. Applicant lacks information to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice.
3. Applicant admits that Opposer’s Trademark Application Serial No. 88976064 (the “’064 Application”) says what it says and denies any inconsistency between the ‘064 Application and paragraph 3 of the Notice.

4. Applicant lacks information to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice.

5. Applicant denies the allegations contained in paragraph 5 of the Notice.

6. Applicant admits the allegations contained in paragraph 6 of the Notice.

7. Applicant denies the allegations contained in paragraph 7 of the Notice.

8. Applicant denies the allegations contained in paragraph 8 of the Notice.

9. Applicant denies the allegations contained in paragraph 9 of the Notice.

10. Applicant lacks information to form a belief as to the truth of the allegations contained in paragraph 10 of the Notice.

11. Applicant denies the allegations contained in paragraph 11 of the Notice.

12. Applicant denies the allegations contained in paragraph 12 of the Notice.

13. Applicant denies the allegations contained in paragraph 13 of the Notice.

14. Applicant lacks information to form a belief as to the truth of the allegations contained in paragraph 14 of the Notice.

15. Applicant lacks information to form a belief as to the truth of the allegations of paragraph 15 of the Notice.

Wherefore, Applicant denies that Petitioner is entitled to any relief requested in the Amended Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Failure to State a Claim Upon Which Relief May Be Granted

1. Petitioner fails to state a claim upon which relief may be granted.

Second Affirmative Defense
No Likelihood of Confusion

2. International Class 44 encompasses a wide range of disparate services: medical services, veterinary services; hygienic and beauty care for human beings or animals; and agriculture, horticulture and forestry services. The Explanatory note by the USPTO states that Class 44 “includes mainly medical care, hygienic and beauty care given by persons or establishments to human beings and animals; it also includes services relating to the fields of agriculture, horticulture and forestry;” and “in particular” it includes “Medical analysis services relating to the treatment of persons (such as x-ray examinations and taking of blood samples); Artificial insemination services; Pharmacy advice; Animal breeding; Services relating to the growing of plants such as gardening; Services relating to floral art such as floral compositions as well as garden design.”

3. Consequently, any likelihood of confusion inquiry in Class 44 with respect to identical marks should look to the types of services being offered and their respective channels of trade.

4. Opposer intends to use NATIVA in connection with “Online resources, namely, providing information, news, and commentary pertaining to health, wellness, the medical benefits of cannabis, medical cannabis strains, therapeutic uses, indications, and effects of medical cannabis.”

5. Applicant intends to use NATIVA in connection with “Organic farming services rendered to others in the field of industrial hemp with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis.” In particular, Applicant’s services will include providing farmers with Applicant’s genetic variants of hemp for cultivation; providing and monitoring the implementation of standard operating procedures and guidelines for cultivation, soil and weed management, and biological pest control in an integrated pest management system, including but not limited to monitoring of crops for common molds; assisting famers with establishing general quality and

compliance management systems for farming hemp; training with respect to any of the foregoing; and providing permitting and licensing for hemp cultivation.

6. Applicant's services are dissimilar to Opposer's services in significant ways, including but not limited to the following:

- a. By definition, Applicant's services are highly specialized, and will be marketed to companies and individuals who are growing or intend to grow industrial hemp, while Opposer's services consist of providing information to general consumers about marijuana, with the quite obvious purpose of aiding in the promotion of its line of marijuana products that it intends to launch in Canada –if marijuana ever becomes legal under federal law, the United States. (As can be seen from Opposer's other applications, Opposer does not intend to provide informational services for an eleemosynary purpose.)
- b. Opposer intends to provide its services, which are purely educational, online, while Applicant's services will be (literally) rendered in the field. Applicant's services are physical rather than virtual.
- c. The cultivation of industrial hemp has been legal under federal law since December 20, 2018, while the cultivation of marijuana remains illegal under U.S. federal law.

Third Affirmative Defense

Allowing Opposer to Have Priority Over Applicant Would Be Inequitable

7. Applicant filed its Application Serial No. 87477239 on June 6, 2017.
8. At the time it filed, Applicant's services were legal in New York, where Applicant is based, Kentucky, Oregon and other states.
9. Opposer filed the '737 Application on October 25, 2018, more than 16 months later.

10. On September 16, 2019, Opposer's services in Class 44 proceeded under the "child" Application Serial No. 88976064 (the "Child Application").

11. At the time Opposer filed the '737 Application, Opposer knew that Applicant's Application Serial No. 87477239 was pending and that, at the time, Applicant had priority of use over the NATIVA mark.

12. On May 7, 2019, the United States Patent and Trademark Office issued an Office action, stating, *inter alia*, that

- a. On December 20, 2018, the CSA was amended to remove hemp from the definition of marijuana and specifically exclude "tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)" from Schedule I, 21 U.S.C. §812(c)(17). The goods and/or services identified did not potentially comply with applicable federal laws until that date. Because the identified goods and/or services consist of or include items or activities that are prohibited under the Controlled Substances Act, the applicant did not have a valid basis for filing the application. Nevertheless, to the extent the applicant's goods will be derived from cannabis plants that meet the current statutory definition of hemp, the goods may presently be lawful; and
- b. Due to the changed circumstances and the potential lawfulness of certain products and activities that meet the definition of the Agricultural Marketing Act of 1946, as amended (AMA), applicant may request to amend the filing date of the current application to be December 20, 2018.

13. In its July 8, 2019 response to the Office Action, Applicant agreed to amend the date of its application to December 20, 2018, with the statement required by the Examining Attorney, i.e., "Applicant hereby states for the record that such change to the filing date is authorized, and that Applicant has, as of that date, a bona fide intent to use the applied for mark for the services stated in the application, as amended."

14. Following the amendment of Applicant's date of filing, Opposer filed a request to divide the '737 Application so that it could register NATIVA for "Online resources, namely, providing information, news, and commentary pertaining to health, wellness, the medical benefits of cannabis, medical cannabis

strains, therapeutic uses, indications, and effects of medical cannabis.” The Child Application subsequently issued, and although later filed, it technically has priority over Applicant’s application.

15. Granting the Opposition would be inequitable given Applicant’s earlier-filed application, because it would have the effect of unfairly penalizing Applicant’s Class 44 services, which were legal in New York, Kentucky, Oregon, and many other states at the time Applicant filed its application, and for the delay in the passage of the uncontroversial Hemp Farming Act of 2018, which was placed on the Senate calendar on April 12, 2018 by Mitch McConnell (thereby skipping committees and debates), and subsequently incorporated into the 2018 Farm Bill.

Dated: November 18, 2019

Respectfully submitted:
GORDON E. R. TROY, PC
/s/ Gordon E. R. Troy, Esq.

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United States Patent and Trademark Office
Trademark Trial and Appeal Board

Our Ref: TT194855

In re Trademark Application
Trademark: ELECTRIC LADY
Serial No. 88322558
Published: June 18, 2019

Electric Lady, LLC

Plaintiff/Petitioner,

- against -

LIC Brewery, LLC,

Defendant/Applicant.

Opposition No. 91251393

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this November 18, 2019, the foregoing **Applicant's Answer to Amended Notice of Opposition and Defenses** was served on Opposer's counsel via email:

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/s/ Gordon E. R. Troy, Esq.

Gordon E. R. Troy, *Attorney for Applicant*