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

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|------------------------|--|
| Proceeding | 91252432 |
| Party | Defendant Bilcare Research, Inc. |
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| Submission | Answer |
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| Date | 12/30/2019 |
| Attachments | 91252432 - Answer to Consolidated Opposition - OPTIMA and OP-TIMAPAK.pdf(18827 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| _____ |) | |
| OPTIMA-Maschinenfabrik Dr. Buhler |) | |
| GmbH & Co. KG |) | |
| |) | |
| Opposer, |) | Opposition No. 91252432 |
| |) | |
| v. |) | |
| |) | |
| Bilcare Research, Inc. |) | |
| |) | |
| Applicant. |) | |
| _____ |) | |

ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION

Bilcare Research, Inc. (“Applicant”), as and for its Answer to the Consolidated Notice of Opposition of OPTIMA-Maschinenfabrik Dr. Buhler GmbH & Co. KG (“Opposer”), responds as follows:

Regarding the allegations contained in the preamble of the Consolidated Notice of Opposition, as they relate to Opposer OPTIMA-Maschinenfabrik Dr. Buhler GmbH & Co. KG, Applicant is without knowledge and information sufficient to form a belief as to the allegations relating to the corporate address, formation and place of business for Opposer, and therefore denies same. Applicant also denies that Opposer will be damaged by the registration of Application Serial Nos. 88/363,404 and 88/363,398 for the OPTIMA and OPTIMAPAK marks, as the marks at issue are simply not confusingly similar.

Applicant responds to each of the subsequently numbered paragraphs as set forth below.

1. Applicant is without knowledge and information sufficient to form a belief as to

the allegations contained in Paragraph 1 of the Consolidated Notice of Opposition and therefore denies same.

2. Applicant admits the allegations as set forth in Paragraph 2 of the Consolidated Notice of Opposition.

3. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 3 of the Consolidated Notice of Opposition and therefore denies same.

4. Applicant admits that the records of the United States Patent and Trademark Office (“USPTO”) reflect the existence of, and ownership of the mark OPTIMA by Opposer, listing the same international trademark classes, goods descriptions, and registration number, and registration and first use dates. Applicant is without knowledge and information sufficient to form a belief as to the accuracy, validity and incontestability in and to the said trademark as alleged, and therefore denies same, leaving Opposer to strict proof thereof.

5. Applicant admits that the records of the USPTO reflect the existence of, and ownership of the mark OPTIMA by Opposer, listing the same international trademark classes, goods descriptions, and registration number, and registration and first use dates. Applicant admits that the records affixed as Exhibit “A” appear to be records from the USPTO. Applicant is without knowledge and information sufficient to form a belief as to the accuracy or validity of such information and documents, leaving Opposer to strict proof thereof.

6. Applicant admits that the records of the USPTO reflect the existence of, and ownership of applications for the marks OPTIMA and OPTIMA TOTAL CARE by Opposer, listing the same serial numbers, as set forth in the Consolidated Notice of Opposition. Applicant admits that the records affixed as Exhibit “B” appear to be records from the USPTO. Applicant

is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Consolidated Notice of Opposition as they relate to alleged exclusive common law rights and purported dates of first use and therefore denies same, leaving Opposer to strict proof thereof.

7. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Consolidated Notice of Opposition and therefore denies same.

8. Applicant admits the allegations as set forth in Paragraph 8 of the Consolidated Notice of Opposition.

9. Applicant admits the allegations as set forth in Paragraph 9 of the Consolidated Notice of Opposition.

10. Applicant denies the Opposer's allegations as set forth in Paragraph 10 of the Consolidated Notice of Opposition.

11. Applicant denies the Opposer's allegations as set forth in Paragraph 11 of the Consolidated Notice of Opposition.

WHEREFORE, Applicant prays that Application Serial Nos. 88/363,404 and 88/363,398 be allowed to proceed to registration, and that the Consolidated Opposition be dismissed with prejudice.

AFFIRMATIVE DEFENSES

By asserting these affirmative defenses, Applicant does not admit that it necessarily bears the burden of proof or persuasion for any of the defenses or issues raised therein. Moreover, at this time, Applicant has insufficient knowledge upon which to form a belief as to whether additional defenses are presently available to them. Applicant reserves its right to amend the

Answer to the Consolidated Notice of Opposition to add, delete, or modify defenses based on legal theories which may or will be divulged through clarification of the Consolidated Notice of Opposition, through discovery, or through further legal analysis of Opposer's position in this opposition. Subject to the foregoing, for its affirmative defenses in this action, Applicant hereby asserts and alleges the following:

FIRST AFFIRMATIVE DEFENSE

The Consolidated Notice of Opposition fails to state a cause of action upon which relief may be granted in law or equity, as Opposer does not own exclusive rights in and to all use and registrations of marks containing the term OPTIMA.

SECOND AFFIRMATIVE DEFENSE

Applicant's marks are not confusingly similar to any of Opposer's marks.

THIRD AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred because there is no risk of damage to Opposer's goodwill.

FOURTH AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred by laches, waiver and estoppel, as Applicant's OPTIMA mark has been in use without objection in various forms since as early as 2008.

FIFTH AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred by laches, waiver and estoppel, because of Opposer's failure to police its mark against other uses of OPTIMA and OPTIMA formative marks, thereby diluting the distinctive quality of the mark.

SIXTH AFFIRMATIVE DEFENSE

The extensive amount of third party use and registration of marks consisting of or incorporating the word OPTIMA (as reflected in both the USPTO Registry and number of third party OPTIMA marks originally cited against Opposer's OPTIMA TOTAL CARE application) precludes Opposer from claiming exclusive right to use and registration of the term OPTIMA.

BILCARE RESEARCH, INC.

Date: 30 December 2019

By: /Christopher D. Olszyk, Jr./

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION was served on counsel for Opposer, this 30th day of December 2019, by sending same via email, to:

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