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

Proceeding	91254427
Party	Defendant Mother's Milk, Inc.; Uzinmedicare Co.
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Date	04/22/2020
Attachments	Answer for opposition 080327-02.pdf(377873 bytes)

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

In the Matter of Application Serial No. 87/776,295

Mark:

Published: November 5, 2019

Motif Medical, LLC, Opposer, v. Mother's Milk, Inc. DBA Spectra Baby USA; and Min Byung Wook DBA Uzinmedicare (As reflected in Applicants' September 13, 2019 Post Publication Amendment to correct one co-Applicant's name), Applicants.	Opposition No. 91254427

ANSWER AND AFFIRMATIVE DEFENSES OF APPLICANTS MOTHER'S MILK, INC. AND MIN BYUNG WOOK DBA UZINMEDICARE

Applicants Mother's Milk, Inc. DBA Spectra Baby USA ("**Mother's Milk**") and Min Byung Wook DBA Uzinmedicare ("**Uzinmedicare**") (Uzinmedicare's information has been properly updated in this Answer to reflect Applicants' September 13, 2019 Post Publication Amendment related to the same) (collectively, "**Applicants**"), by and through their attorneys, hereby answer the Notice of Opposition ("the **Opposition**") filed by Motif Medical, LLC ("**Motif**"

or "**Opposer**") as follows. To the extent not explicitly admitted, all allegations in the Opposition are denied.

ANSWER

1. Applicants lack information and/or knowledge sufficient to form a belief as to the truth of the matters alleged in enumerated Paragraph 1 of the Notice of Opposition, and on that basis deny the same.

2. Applicants lack information and/or knowledge sufficient to form a belief as to the truth of the matters alleged in enumerated Paragraph 2 of the Notice of Opposition, and on that basis deny the same.

3. Applicants lack information and/or knowledge sufficient to form a belief as to the truth of the matters alleged in enumerated Paragraph 3 of the Notice of Opposition, and on that basis deny the same.

4. In response to enumerated Paragraph 4 of the Notice of Opposition, Applicants admit that they sent and received letters on or about the dates listed in enumerated Paragraph 4. The remaining allegations in enumerated Paragraph 4 of the Notice of Opposition consist of alleged and unsupported legal conclusions to which no response is required. To the extent that a response is required, Applicants deny the same.

5. In response to the allegations in enumerated Paragraph 5 of the Notice of Opposition, Applicants state that Paragraph 5 consists of alleged and unsupported legal conclusions to which no response is required. To the extent that a response is required, Applicants deny the same, and Applicants deny the remaining allegations set forth in enumerated Paragraph 5 of the Notice of Opposition.

6. In response to enumerated Paragraph 6 of the Notice of the Opposition, Applicants admit that they filed U.S. trademark application, bearing serial no. 87/776,295, on January 30, 2018 based on use of Applicants' Mark in commerce in connection with *breast pumps*, in International Class 10.

7. In response to enumerated Paragraph 7 of the Notice of Opposition, Applicants state that the application speaks for itself.

8. In response to enumerated Paragraph 8 of the Notice of Opposition, Applicants state that the application speaks for itself.

9. In response to enumerated Paragraph 9 of the Notice of Opposition, Applicants admit that they made all declarations and representations required for an application with the United States Patent and Trademark Office, inclusive of (a) through (c) listed in Paragraph 9. Applicants deny the remaining allegations set forth in enumerated Paragraph 9 of the Notice of Opposition.

10. Applicants admit the allegation set forth in enumerated Paragraph 10 of the Notice of Opposition.

11. In response to enumerated Paragraph 11 of the Notice of Opposition, Applicants admit that they, through counsel, amended the description of Applicants' Mark and submitted a new drawing on September 4, 2018. The remaining allegations in enumerated Paragraph 11 consist of alleged and unsupported legal conclusions to which no response is required. To the extent that a response is required, Applicants deny the same.

12. Applicants admit the allegations set forth in enumerated Paragraph 12 of the Notice of Opposition.

13. Applicants admit the allegations set forth in enumerated Paragraph 13 of the Notice of Opposition.

14. In response to enumerated Paragraph 14 of the Notice of Opposition, Applicants admit that Exhibit F appears to be a copy of its March 8, 2019 Request for Reconsideration with the U.S. Patent and Trademark Office. Applicants deny all other allegations found in enumerated Paragraph 14 of the Notice of Opposition.

15. In response to enumerated Paragraph 15 of the Notice of Opposition, Applicants admit that on or about March 29, 2019 the U.S. Patent and Trademark Office issued an Office Action, which Office Action speaks for itself. Applicants deny the remaining allegations set forth in enumerated Paragraph 15 of the Notice of Opposition.

16. In response to enumerated Paragraph 16 of the Notice of Opposition, Applicants admit that on or about April 6, 2019 they submitted a response to the March 29, 2019 Office Action, which response speaks for itself. Applicants deny the remaining allegations set forth in enumerated Paragraph 16 of the Notice of Opposition.

17. In response to enumerated Paragraph 17 of the Notice of Opposition, Applicants admit that Exhibit G appears to be a copy of Applicants' April 6, 2019 Response, which response speaks for itself. Applicants deny the remaining allegations set forth in enumerated Paragraph 17 of the Notice of Opposition.

18. Applicants admit that on September 13, 2019 they filed a Post Publication Amendment to update the application record (as allowed under the USPTO Rules), and that a copy of the amendment appears to be attached to the Notice of Opposition as Exhibit H. Except as expressly admitted, Applicants deny the remaining allegations set forth in enumerated Paragraph 18 of the Notice of Opposition.

19. Applicants admit the allegations set forth in enumerated Paragraph 19 of the Notice of Opposition.

20. Applicants admit the allegations set forth in enumerated Paragraph 20 of the Notice of Opposition.

FIRST GROUND FOR OPPOSITION - FRAUD

21. No response is required to enumerated Paragraph 21 of the Notice of Opposition. To the extent a response is required, Applicants deny the allegations found in enumerated Paragraph 21 of the Notice of Opposition and incorporate by reference herein their responses above to Paragraphs 1 through 20 of the Notice of Opposition.

22. Applicants admit that they are aware of the declarations and representations required for an Application with the United States Patent and Trademark Office. Except as expressly admitted herein, Applicants deny the allegations set forth in enumerated Paragraph 22 of the Notice of Opposition.

23. Applicants admit that Min Byung Wook dba Uzinmedicare was inadvertently not identified as an applicant at the time of filing of the original application, but the record was later properly corrected to identify him, pursuant to Section 1201.02(c) of the TMEP, by way of the Post Publication Amendment filed on September 13, 2019. Except as expressly admitted herein, Applicants deny the allegations set forth in enumerated Paragraph 23 of the Notice of Opposition.

24. Applicants admit that Uzinmedicare Co. was not a Korean company at the time of the application filing. The remaining allegations in enumerated Paragraph 24 of the Notice of Opposition consist of alleged and unsupported legal conclusions to which no response is required. To the extent that a response is required, Applicants deny the same.

25. Applicants admit that Uzinmedicare Co., a non-existent company, was not an owner of Applicants' mark. Except as expressly admitted herein, Applicants deny the allegations set forth in enumerated Paragraph 25 of the Notice of Opposition.

26. Applicants admit the allegations found in enumerated Paragraph 26 of the Notice of Opposition.

27. Applicants deny the allegations set forth in enumerated Paragraph 27 of the Notice of Opposition.

28. Applicants deny the allegations set forth in enumerated Paragraph 28 of the Notice of Opposition.

29. Applicants admit the allegations set forth in enumerated Paragraph 29 of the Notice of Opposition.

30. Applicants deny the allegations set forth in enumerated Paragraph 30 of the Notice of Opposition.

31. Applicants deny the allegations set forth in enumerated Paragraph 31 of the Notice of Opposition.

32. Applicants deny the allegations set forth in enumerated Paragraph 32 of the Notice of Opposition.

33. Applicants deny the allegations set forth in enumerated Paragraph 33 of the Notice of Opposition.

34. Applicants deny the allegations set forth in enumerated Paragraph 34 of the Notice of Opposition.

35. Applicants deny the allegations set forth in enumerated Paragraph 35 of the Notice of Opposition.

36. Applicants deny the allegations found in enumerated Paragraph 36 of the Notice of Opposition.

37. Applicants deny the allegations set forth in enumerated Paragraph 37 of the Notice of Opposition.

38. Applicants deny the allegations set forth in enumerated Paragraph 38 of the Notice of Opposition.

SECOND GROUND FOR OPPOSITION - FUNCTIONALITY

39. No response is required to enumerated Paragraph 39 of the Notice of Opposition. To the extent a response is required, Applicants deny the allegations found in enumerated Paragraph 39 of the Notice of Opposition and incorporate by reference herein their responses above to Paragraphs 1 through 20 of the Notice of Opposition.

40. Applicants deny the allegations set forth in enumerated Paragraph 40 of the Notice of Opposition.

41. Applicants deny the allegations set forth in enumerated Paragraph 41 of the Notice of Opposition.

42. Applicants deny the allegations set forth in enumerated Paragraph 42 of the Notice of Opposition.

43. Applicants deny the allegations set forth in enumerated Paragraph 43 of the Notice of Opposition.

44. Applicants deny the allegations set forth in enumerated Paragraph 44 of the Notice of Opposition.

45. Applicants deny the allegations set forth in enumerated Paragraph 45 of the Notice of Opposition.

46. Applicants deny the allegations set forth in enumerated Paragraph 46 of the Notice of Opposition.

47. Applicants deny the allegations set forth in enumerated Paragraph 47 of the Notice of Opposition.

THIRD GROUND FOR OPPOSITION – NONDISTINCTIVE PRODUCT DESIGN

48. No response is required to enumerated Paragraph 48 of the Notice of Opposition. To the extent a response is required, Applicants deny the allegations found in enumerated Paragraph 48 of the Notice of Opposition and incorporate by reference herein their responses above to Paragraphs 1 through 20 of the Notice of Opposition.

49. Applicants deny the allegations set forth in enumerated Paragraph 49 of the Notice of Opposition.

50. Applicants deny the allegations set forth in enumerated Paragraph 50 of the Notice of Opposition.

51. Applicants deny the allegations set forth in enumerated Paragraph 51 of the Notice of Opposition.

52. Applicants deny the allegations set forth in enumerated Paragraph 52 of the Notice of Opposition.

53. Applicants deny the allegations set forth in enumerated Paragraph 53 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicants undertake the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. Applicants expressly

reserve the right to plead additional affirmative and other defenses should any such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicants state as follows:

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Applicants allege on information and belief that as a result of Opposer's own acts and/or omissions, the Opposition is barred by the equitable defense of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Applicants allege on information and belief that as a result of Opposer's own acts and/or omissions, the Opposition is barred by the equitable defenses of laches, waiver and/or estoppel.

FOURTH AFFIRMATIVE DEFENSE

The TTAB lacks jurisdiction to adjudicate all or some of Opposer's claims.

WHEREFORE, Applicants respectfully request that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicants as it deems just.

Dated: April 22, 2020

Nixon Peabody LLP

By: /Lauren J. Arnold/

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2020 a true and correct copy of the foregoing Applicants' Answer And Affirmative Defenses was served upon Angela P. Doughty via the following via email: trademarks@wardandsmith.com.

/Lauren J. Arnold/

Lauren J. Arnold