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

Proceeding	91265486
Party	Defendant VITAMIN CLASSICS, INC
Correspondence Address	MICHAEL A PAINTER ISAACMAN KAUFMAN PAINTER LOWY & ZUCKER PC 1100 GLENDON AVE., 15TH FL LOS ANGELES, CA 90024 UNITED STATES Primary Email: painter@ikplaw.com Secondary Email(s): conaway@ikplaw.com 310-881-6800
Submission	Answer
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Date	11/05/2020
Attachments	DOC1956.2020.1.pdf(753356 bytes)

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

2064842 ALBERTA LTD,)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91/265,486
)	
VITAMIN CLASSICS, INC.)	
)	
Applicant.)	
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ANSWER TO NOTICE OF OPPOSITION

Applicant, VITAMIN CLASSICS, INC., in answer to the Notice of Opposition filed by 2064842 ALBERTA LTD., against application for registration of VITAMIN CLASSICS, INC.'s trademark SLEEP-MAX, Serial No. 88/215,513 published in the Official Gazette of June 30, 2020, admits, denies and avers as follows:

1. In answer to Paragraph 1 of the Notice of Opposition, Applicant admits that opposer has been marketing and selling a sleeping aid product under the trademarks NOVA THR3E LABS and MAX SLEEP. In answer to all other allegations in Paragraph 1 of the Notice of Opposition, Applicant is without information or belief sufficient to respond thereto and, based on such lack of information and belief, denies each and every other allegation set forth therein.

2. In answer to Paragraph 2 of the Notice of Opposition, Applicant denies each and every allegation set forth therein.

3. In answer to Paragraph 3 of the Notice of Opposition, Applicant admits that if granted registration of its SLEEP-MAX, Applicant would obtain statutory rights, including prima facie rights to the exclusive use of the alleged trademark. In answer to all other allegations in Paragraph 3 of the Notice of Opposition, Applicant denies each and every other allegation set forth therein.

4. In answer to Paragraph 4 of the Notice of Opposition, Applicant denies each and every allegation set forth therein.

5. In answer to Paragraph 5 of the Notice of Opposition, Applicant admits each and every allegation set forth therein.

6. In answer to Paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation set forth therein.

7. In answer to Paragraph 7 of the Notice of Opposition, Applicant's admits that the description of goods in Applicant's application to register the SLEEP-MAX states "Pharmaceutical preparations for use as a sleeping aid." Applicant denies each and every other allegation set forth therein.

8. In answer to Paragraph 8 of the Notice of Opposition, Applicant admits each and every allegation set forth therein.

9. In answer to Paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation set forth therein.

FIRST AFFIRMATIVE DEFENSE

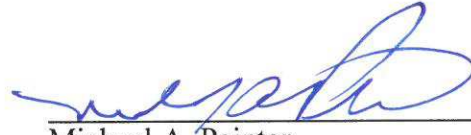
10. As a first, distinct and separate affirmative defense, Applicant alleges that by reason of the marketing and sale of sleep aid products identified by the SLEEP-MAX trademark, the SLEEP-MAX trademark has become distinctive and has acquired secondary meaning in the eyes of consumers and the trade.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety and that the Certificate of Registration be issued to Applicant for its mark.

Respectfully submitted,

ISAACMAN, KAUFMAN, PAINTER,
LOWY & ZUCKER, P.C.

By:



Michael A. Painter
Attorneys for Applicant

MAP:src
Dated: November 5, 2020
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PROOF OF SERVICE

The undersigned declares under the penalty of perjury the within ANSWER OF NOTICE OF OPPOSITION was forwarded to counsel for Opposer, via electronic mail at Dspielman@ConceptLaw.com , this 5th day of November, 2020.


SHERYL R. CONAWAY