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Filing date: **11/24/2020**

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

Proceeding	91265646
Party	Defendant Fresenius Kabi Deutschland GmbH
Correspondence Address	SCOTT D. WOLDOW SMITH, GAMBRELL & RUSSELL, LLP 1055 THOMAS JEFFERSON STREET, NW SUITE 400 WASHINGTON, DC 20007 UNITED STATES Primary Email: swoldow@sgrlaw.com Secondary Email(s): docketing@sgrlaw.com 202-263-4300
Submission	Answer
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Signature	/SW/
Date	11/24/2020
Attachments	Answer.pdf(23758 bytes)

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

In the Matter of Application Serial No. 88/816,766
Published on July 7, 2020
Mark: TILMIUS

RADIUS HEALTH, INC.,)	
)	
)	
)	
Opposer,)	
)	
v.)	Opposition No. 91265646
)	
FRESENIUS KABI DEUTSCHLAND GMBH)	
)	
Applicant.)	

ANSWER

Now comes Applicant, FRESENIUS KABI DEUTSCHLAND GMBH (“Applicant”), through its undersigned counsel, and answers the Notice of Opposition of RADIUS HEALTH, INC.

With respect to Opposer’s grounds for opposition, Applicant answers as follows:

Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the unnumbered paragraphs and therefore denies the same.

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the first paragraph and therefore denies the same.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second paragraph and therefore denies the same.

3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the third paragraph and therefore denies the same.
4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the fourth paragraph and therefore denies the same.
5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the fifth paragraph and therefore denies the same.
6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the sixth paragraph and therefore denies the same.
7. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the seventh paragraph and therefore denies the same.
8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the eighth paragraph and therefore denies the same.
9. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the ninth paragraph and therefore denies the same.
10. Applicant admits the allegations in the tenth paragraph of the Notice of Opposition.
11. Applicant admits the allegations in the eleventh paragraph of the Notice of Opposition.
12. Applicant admits the allegations in the twelfth paragraph of the Notice of Opposition.
13. Applicant admits the allegations in the thirteenth paragraph of the Notice of Opposition.
14. Applicant repeats and realleges each and every response to the allegations set forth above.

15. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the fifteenth paragraph and therefore denies the same.

16. Applicant denies the allegations in the sixteenth paragraph of the Notice of Opposition.

17. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the seventeenth paragraph and therefore denies the same.

18. Applicant denies the allegations in the eighteenth paragraph of the Notice of Opposition.

19. Applicant denies the allegations in the nineteenth paragraph of the Notice of Opposition.

20. Applicant denies the allegations in the twentieth paragraph of the Notice of Opposition.

Applicant denies the allegations of the last unnumbered paragraph of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's Mark, in association with the designated goods, and the pled marks, in association with the specified goods, are not confusingly similar.

Second Affirmative Defense

Opposer is not likely to be damaged by registration of Application Serial No. 88/816,766.

Third Affirmative Defense

Any rights Opposer may have in its asserted mark are limited and narrow in scope of protection and, therefore no likelihood of confusion exists between Opposer's marks as applied to Opposer's goods and Applicant's mark covered by Application Serial No. 88/816,766 as applied to Applicant's goods.

Fourth Affirmative Defense

Applicant reserves the right to raise additional defenses that are not known at this time, but may become known through the course of discovery and this proceeding.

WHEREFORE, Applicant requests the dismissal of Opposition No. 91265646 with prejudice and the Allowance of Application Serial No. 88/816,766.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

/SW/

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Attorney Docket No.
034175.060Opp

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CERTIFICATE OF SERVICE

I, Scott D. Woldow, counsel for Applicant, do hereby certify that the Answer to the Notice of Opposition was served upon the Opposer by email, addressed as follows:

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/SW/

Scott D. Woldow