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

Proceeding	91266485
Party	Defendant Aura Vitamins LLC
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Attachments	90022053_Answer.pdf(277619 bytes)

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

Global Trademarks, Inc.	:	Opposition No.: 91266485
<i>Opposer</i>		Mark: Ultra Slender (Stylized)
		Serial No.: 90/022,053
v.	:	
Aura Vitamins, LLC	:	
<i>Applicant</i>		

ANSWER TO OPPOSITION

Applicant, Aura Vitamins, LLC (hereinafter “Applicant”) through its undersigned counsel, hereby timely files its Answer to the Notice of Opposition filed by Global Trademarks, Inc. (hereinafter “Opposer”). Applicant answers the specific allegations contained in Opposer’s Notice of Opposition as follows:

Opposer, Its Products and Its SLENDER Trademarks

1. Admitted.
2. Applicant lacks sufficient information to either admit or deny the allegations in Paragraph 2 and therefore denies those allegations.
3. Admitted.
4. Applicant lacks sufficient information to either admit or deny the allegations in Paragraph 4 and therefore denies those allegations.
5. Applicant lacks sufficient information to either admit or deny the allegations in Paragraph 5 and therefore denies those allegations.

Applicant and Its Mark

6. Admitted.
7. Admitted.

COUNT ONE

Likelihood of Confusion, 15 U.S.C. §1052(d)

8. Denied.
9. Applicant lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore denies those allegations.
10. Denied.

AFFIRMATIVE DEFENSES

11. Opposer is not likely to be damaged by registration of Applicant's mark and therefor, Opposer lacks standing to oppose registration of same.
12. Opposer's word marks and Applicant's design mark are not confusingly similar in any manner.

None of Opposer's cited marks are identical to the literal element of Applicant's mark.

13. Opposer has failed to police other trademark applications containing the word "SLENDER." Attached as Exhibit A is a listing of trademark applications/registrations containing the word SLENDER. Only the two marks highlighted have been opposed.
14. Applicant reserves the right to add to and amend its Affirmative Defenses after discovery in this matter.

ARGUMENTS

Opposer's cited marks are: SLENDERBODY, SLENDERSUIT, SLENDER TECH, and LOOK SLENDER IN SECONDS. Applicant's mark is "ULTRA SLENDER," and also contains a stylized element. The Cited Marks and Applicant's mark are distinct because the Cited Marks contain SLENDER as the first word, whereas Applicant's mark leads with "Ultra."

In re E.I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Similarity of the marks in one respect – sight, sound, or meaning – will not automatically result in a finding of likelihood of confusion, even if the services are identical or closely related. TMEP §1207.01(b)(i). It is also accepted that the use of identical, even dominant, words in common does not necessarily mean that two marks are similar. *See General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 687 (8th Cir. 1987) (holding defendant's OATMEAL RAISIN CRISP did not infringe plaintiff's APPLE RAISIN CRISP trademark). This is because marks must be considered in their entireties. *See, e.g.*, TMEP §1207.01.

Even the use of identical dominant words or terms does not automatically mean that two marks are confusingly similar. *See e.g. In re Bed & Breakfast Registry*, 791 F.2d 157 (Fed. Cir. 1986) (holding BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL not confusingly similar). In *First Savings Bank*, marks for "FirstBank" and for "First Bank Kansas"

were found not to be confusingly similar. *First Savings Bank*, 101 F.3d at 645. Furthermore, in *Luigino's*, the mark "Lean Cuisine" was found to not be confusingly similar to "Michelina's Lean 'N Tasty" even though both marks use the word "Lean" and are in the same class of goods, namely, low-fat frozen food. *Luigino's Inc. v. Stouffer Corp.*, 170 F.3d 827 (8th Cir. 1999) (superseded by statute on other grounds).

Opposer has failed to police other trademark applications containing the word "SLENDER." Attached as Exhibit A is a listing of trademark applications/registrations containing the word SLENDER. That is, other marks that contain "SLENDER" have been allowed to coexist on the registry.

Dated: January 24, 2021

Respectfully submitted,

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Exhibit A

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	<u>90022053</u>		<u>ULTRA SLENDER</u>	<u>TSDR</u>	<u>LIVE</u>
2	<u>88726393</u>		<u>TRANSSLENDER</u>	<u>TSDR</u>	<u>LIVE</u>
3	<u>88061849</u>	<u>5817941</u>	<u>POWER SLENDER</u>	<u>TSDR</u>	<u>LIVE</u>
4	<u>87042360</u>		<u>SLENDER MAN</u>	<u>TSDR</u>	<u>LIVE</u>
5	<u>87042367</u>		<u>THE SLENDER MAN</u>	<u>TSDR</u>	<u>LIVE</u>

6	<u>87252535</u>	<u>5249911</u>	<u>SLENDER FX</u>	<u>TSDR</u>	<u>LIVE</u>
7	<u>86461253</u>	<u>5680823</u>	<u>SLENDERBODY</u>	<u>TSDR</u>	<u>LIVE</u>
8	<u>86103633</u>	<u>4559451</u>	<u>SLENDER TOUCH</u>	<u>TSDR</u>	<u>LIVE</u>
9	<u>86881185</u>	<u>5851859</u>	<u>SUDDENLY SLENDER PLUS</u>	<u>TSDR</u>	<u>LIVE</u>
1 0	<u>86881177</u>	<u>5851858</u>	<u>SUDDENLY SLENDER</u>	<u>TSDR</u>	<u>LIVE</u>
1 1	<u>86461413</u>	<u>5561317</u>	<u>SLENDERSUIT</u>	<u>TSDR</u>	<u>LIVE</u>
1 2	<u>85320542</u>	<u>4126869</u>	<u>SLENDER SHAPES</u>	<u>TSDR</u>	<u>LIVE</u>
1 3	<u>85361743</u>	<u>4246876</u>	<u>SLENDER TECH</u>	<u>TSDR</u>	<u>LIVE</u>
1 4	<u>79288435</u>		<u>PULSE BY SLENDERTONE</u>	<u>TSDR</u>	<u>LIVE</u>
1 5	<u>79287448</u>		<u>SLENDERTONE PULSE</u>	<u>TSDR</u>	<u>LIVE</u>
1 6	<u>77889380</u>	<u>3935408</u>	<u>SLENDERBODY</u>	<u>TSDR</u>	<u>LIVE</u>
1 7	<u>77305815</u>	<u>3588232</u>	<u>SLENDER SECRET</u>	<u>TSDR</u>	<u>LIVE</u>
1 8	<u>76422081</u>	<u>3087945</u>	<u>SLENDERBODY</u>	<u>TSDR</u>	<u>LIVE</u>
1 9	<u>76579207</u>	<u>3402233</u>	<u>LOOK SLENDER IN SECONDS</u>	<u>TSDR</u>	<u>LIVE</u>
2 0	<u>75155315</u>	<u>2115684</u>	<u>SLENDER THIGHS</u>	<u>TSDR</u>	<u>LIVE</u>

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Aura Vitamins, LLC's ANSWER was served upon Opposer by email, on this 24th day of January, 2021, at the following emails:

Lisa Peller London

Belles Katz, LLC

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