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

Proceeding no.	91279391
Party	Defendant Monster Energy Company
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VITALIZE LABS, LLC D/B/A EBOOST, Opposer, v. MONSTER ENERGY COMPANY, Applicant.	Opposition No.: 91279391 Serial No.: 90/380149 Mark: SUPER FUEL

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant Monster Energy Company ("Monster" or "Applicant") hereby answers the Notice of Opposition ("Notice") filed by Vitalize Labs, LLC d/b/a EBOOST ("Opposer") against U.S. Trademark Application Serial No. 90/380149 (the "Application") as follows:

1. Answering Paragraph 1 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

2. Answering Paragraph 2 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

3. Answering Paragraph 3 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

4. Answering Paragraph 4 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

5. Answering Paragraph 5 of Opposer's Notice, Monster admits that the United States Patent and Trademark Office ("PTO") records identify Opposer as the owner of U.S. Trademark Application Serial No. 88/031,459 ("the '459 Application") (now abandoned) for the standard character mark SUPER FUEL for "dietary supplemental drinks; dietary supplemental drinks in the nature of vitamin and mineral beverages" in International Class 5 and "energy drinks; energy drinks enhanced with vitamins, minerals, herbs, nutrients" in International Class 32. Monster further admits that, according to the PTO's records, the '459 Application was filed on July 10, 2018 under Section 1(b) of the Trademark Act. Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity as to the remaining allegations contained in Paragraph 5 of Opposer's Notice and, on that basis, denies the remaining allegations.

6. Answering Paragraph 6 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

7. Answering Paragraph 7 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

8. Answering Paragraph 8 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

9. Answering Paragraph 9 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

10. Answering Paragraph 10 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

11. Answering Paragraph 11 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

12. Answering Paragraph 12 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

13. Answering Paragraph 13 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

14. Answering Paragraph 14 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

15. Answering Paragraph 15 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

16. Answering Paragraph 16 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

17. Answering Paragraph 17 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

18. Answering Paragraph 18 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

19. Answering Paragraph 19 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

20. Answering Paragraph 20 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

21. Answering Paragraph 21 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

22. Answering Paragraph 22 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

23. Answering Paragraph 23 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, on that basis denies these allegations.

24. Answering Paragraph 24 of Opposer's Notice, Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation regarding Opposer's alleged "use of the SUPER FUEL mark in commerce, through the United States," and

therefore, on that basis denies that allegation. Monster denies the remaining allegations contained in Paragraph 24 of the Notice.

25. Answering Paragraph 25 of Opposer's Notice, Monster admits the allegations stated therein.

26. Answering Paragraph 26 of Opposer's Notice, Monster admits that on December 14, 2020, it filed with the PTO U.S. Trademark Application Serial No. 90380149 ("the '149 Application") for the mark SUPER FUEL for "non-alcoholic beverages, namely, soft drinks, energy drinks, sports drinks, and flavored waters; drinking water vitamins, nutrients, and amino acids" in International Class 32 (U.S. Classes 45, 46, and 48). Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 26 of Opposer's Notice, and therefore, on that basis denies those allegations.

27. Answering Paragraph 27 of Opposer's Notice, Monster admits that the goods identified in the '149 Application, as published for opposition, are the following: non-alcoholic beverages, namely, soft drinks, energy drinks, sports drinks, and flavored waters; drinking water vitamins, nutrients, and amino acids. Monster denies any remaining allegations contained in Paragraph 27 of the Notice.

28. Answering Paragraph 28 of Opposer's Notice, Monster denies the allegations contained therein.

29. Answering Paragraph 29 of Opposer's Notice, Monster admits that, on April 5, 2021, counsel for Opposer, Anthony A. LoPresti, sent a letter to counsel for Monster which contained a request that Monster abandon the '149 Application. Monster denies the remaining allegations contained in Paragraph 29 of the Notice.

30. Answering Paragraph 30 of Opposer's Notice, Monster admits that the PTO records identify Opposer as the owner of U.S. Trademark Application Serial No. 90/624,329

("the '329 Application") for the standard character mark SUPER FUEL for "energy drinks; Energy drinks enhanced with vitamins, minerals, herbs, nutrients" in International Class 32 (U.S. Classes 45, 46, and 48). Monster further admits that, according to the PTO's records, the '329 Application was filed on April 5, 2021 under Section 1(a) of the Trademark Act and alleges a first use date of November 1, 2017 and alleges a first use in commerce date of February 1, 2019, although Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the alleged accuracy of the listed first use and first use in commerce dates. Monster lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Footnote 1 to Paragraph 30 of the Notice, and therefore, on that basis denies those allegations. Monster denies the remaining allegations contained in Paragraph 30 of the Notice.

31. Answering Paragraph 31 of Opposer's Notice, Monster admits that on April 28, 2021, counsel for Monster requested "evidence of Vitalize's nationwide common law trademark rights pre-dating June 12, 2020." Monster further admits that in response to that request, counsel for Opposer provided a letter dated May 28, 2021. Monster denies the remaining allegations contained in Paragraph 30 of the Notice, including, without limitation, any suggestion or implication that Opposer's May 28, 2021 letter provided evidence sufficient to establish that Opposer has any prior trademark rights in the mark SUPER FUEL.

32. Answering Paragraph 32 of Opposer's Notice, Monster admits that it has not withdrawn the '149 Application. Monster denies the remaining allegations contained in Paragraph 32 of the Notice.

33. Answering Paragraph 33 of Opposer's Notice, Monster denies that there is no issue as to priority. Monster lacks knowledge or information sufficient to form a belief as to the

truth or falsity of the remaining allegations contained in Paragraph 33, and therefore, on that basis denies these allegations.

34. Answering Paragraph 34 of Opposer's Notice, Monster denies the allegations contained therein.

35. Answering Paragraph 35 of Opposer's Notice, Monster admits that it has not begun using the SUPER FUEL mark in connection with goods in U.S. commerce.

36. Answering Paragraph 36 of Opposer's Notice, Monster denies the allegations contained therein.

37. Answering Paragraph 37 of Opposer's Notice, Monster admits that Opposer timely filed the Notice. Monster further admits that in its Notice, Opposer requests that the '149 Application be rejected, that no registration based on the '149 Application be issued to Monster, and that the Opposition be sustained in favor of Opposer, but Opposer denies that the requests have any merit and denies that the '149 Application should be rejected. Monster denies the remaining allegations contained in Paragraph 37 of the Notice.

WHEREFORE, Monster respectfully requests that the Opposition be dismissed with prejudice and that the Board grant further relief as it shall deem appropriate.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 1, 2022

By: */Ari Feinstein/*

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Attorneys for Opposer,
MONSTER ENERGY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** has been served on the Opposer's counsel of record on November 1, 2022 via electronic mail to:

Anthony A. Lopresti
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alopresti@lopresti.one
calendar@lopresti.one

Signature: 

Name: Doreen P. Buluran

Date: November 1, 2022

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