

ESTTA Tracking number: **ESTTA1318258**Filing date: **10/26/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91283364
Party	Defendant Bruno Borges Garcia
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Date	10/26/2023
Attachments	Answer - Nutree.pdf(183545 bytes )

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Attorneys for Applicant,  
Borges Garcia, Bruno

Opposed Mark: NUTREE PROFESSIONAL  
Opposed Application: U.S. Trademark Application Serial No. 97411722

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

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EQUIBAL, INC., )  
 )  
 Opposer, )  
 )  
 v. ) **ANSWER**  
 )  
 BORGES GARCIA, BRUNO, )  
 ) **Opposition No. 91283364**  
 )  
 Applicant. )

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**ANSWER**

Applicant, Bruno Borges Garcia (“Garcia” or “Applicant”), an individual having an address of Rua Gomes de Carvalho 1266, São Paulo, Brazil 04547-005, through its counsel, hereby answers the Notice of Opposition filed in this action by Equibal, Inc., a New York corporation with a principal place of business located at 63-35 Jersey Avenue, P.O. Box 180, Unionville, New York 10988 (“Opposer”).

In response to the preamble introductory paragraph in the Notice of Opposition, Garcia denies the Opposer will be damaged by the registration of the mark shown in Application No. 97411722. All allegations contained in the Notice of Opposition are denied unless specifically admitted.

In response to the specifically numbered paragraphs set forth in the Notice of Opposition, Garcia hereby responds as follows:

1. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 1 of the Notice of Opposition and therefore denies them.

2. Garcia admits the allegation of Paragraph 2.

3. Garcia admits the allegation of Paragraph 3.

4. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies them.

5. Garcia admits only that Opposer is identified on the United States Patent and Trademark Office's records as the owner of U.S. Trademark Registration No. 1912931. Garcia lacks sufficient information to either admit or deny the remaining allegations contained in Paragraph 5 and therefore denies them.

6. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies them.

7. Paragraph 7 is a legal conclusion that does not require an answer.

However, to the extent Paragraph 7 identifies allegations requiring an answer, Garcia denies them.

8. Garcia lacks sufficient information to either admit or deny the allegations contained in paragraph 8 of the Notice of Opposition and therefore denies them.

9. Garcia lacks sufficient information to either admit or deny the allegations contained in paragraph 9 of the Notice of Opposition and therefore denies them.

10. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 10 of the Notice of Opposition and therefore denies them.

11. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 11 of the Notice of Opposition and therefore denies them.

12. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 12 of the Notice of Opposition and therefore denies them.

13. Garcia lacks sufficient information to either admit or deny the allegations contained in Paragraph 13 of the Notice of Opposition and therefore denies them.

14. Denied.

15. Garcia admits the allegation of Paragraph 15.

16. Garcia admits the allegation of Paragraph 16.

17. Denied.

18. Paragraph 18 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 18 identifies allegations requiring an answer, Garcia denies them.

19. Paragraph 19 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 18 identifies allegations requiring an answer, Garcia denies them.

20. Paragraph 20 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 20 identifies allegations requiring an answer, Garcia denies them.

21. Paragraph 21 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 21 identifies allegations requiring an answer, Garcia denies them.

22. Paragraph 22 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 22 identifies allegations requiring an answer, Garcia denies them.

23. Paragraph 23 contains a legal conclusion that does not require an answer. However, to the extent Paragraph 23 identifies allegations requiring an answer, Garcia denies them.

24. Garcia admits only that Applicant filed a used-based application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a). Garcia denies all other allegations in Paragraph 24 of the Notice of Opposition.

WHEREFORE, Registrant requests that the Notice of Opposition be denied in its entirety with prejudice.

**FIRST DEFENSE (FAILURE TO STATE A CLAIM)**

25. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular fails to state legally sufficient grounds for sustaining the opposition.

**SECOND DEFENSE (NO LIKELIHOOD OF CONFUSION)**

26. There is no likelihood of confusion, mistake or deception under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), between Opposer's alleged mark(s) and Garcia's NUTREE PROFESSIONAL mark.

**THIRD DEFENSE (MARK IS MERELY DESCRIPTIVE)**

27. The word FREE as used in connection with Opposer's mark is at least descriptive of Opposer's goods. Opposer offers non-medicated hair removing lotion in connection with its federally registered mark. The term FREE is descriptive as it is conveying the absence of hair. The Opposer's alleged mark is preceded with the term NU in the Opposer's mark, which is pronounced as "new." Put together, NU and FREE is describing a new method of hair removal, which is an accurate description of the Opposer's non-medicated hair removing lotion products. Moreover, there are at least 160 trademark records (applications and registrations) where the word FREE is disclaimed as part of the mark under international class 003. Thus, Garcia submits there is no likelihood of confusion, mistake or deception under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), between Opposer's alleged mark(s) and Garcia's NUTREE PROFESSIONAL mark because, *inter alia*, upon information and belief, Opposer's alleged marks all contain the generic/descriptive term FREE and as such are not a strong indicator of source or origin of Opposer's goods.

28. Garcia hereby reserves its right to assert any and all other defenses as appropriate as they present themselves through the course of this proceeding.

WHEREFORE, Garcia prays:

- A. That the Notice of Opposition be denied in its entirety with prejudice.
- B. That registration on the Principal Register issue to Garcia for the mark set forth in U.S. Trademark Application Serial No. 97411722.

Dated: October 26, 2023

Respectfully submitted,

By: /s/ Mike Rodenbaugh

Michael L. Rodenbaugh  
California Bar No. 179059

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San Francisco, CA 94104  
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Attorney for Applicant  
Bruno Borges Garcia

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify this paper is being electronically filed with the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this October 26, 2023.

Respectfully submitted,

By: /s/ Mike Rodenbaugh

Michael L. Rodenbaugh  
Attorneys for Applicant  
Borges Garcia, Bruno

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **ANSWER** has been served on counsel for opposing party, by email, to the service list consented to by Opposer's counsel.

**SERVICE LIST**

Michael Zall -- [Mike@Zall-Law.com](mailto:Mike@Zall-Law.com), [zalllawny@gmail.com](mailto:zalllawny@gmail.com)

Dated: October 26, 2023

Respectfully submitted,

By: /s/ Mike Rodenbaugh

Michael L. Rodenbaugh  
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Borges Garcia, Bruno