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

Proceeding no.	91284313
Party	Defendant Maxx Life Performance LLC
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Submission	Answer
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Date	05/08/2023
Attachments	Answer Fuel Your Flow Notice of Opposition pdf .pdf(113073 bytes)

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

In the Matter of Application Serial no. 97/039909 Int’l Class 25 and published in the *Official Gazette* October 29, 2019.

Flow Beverages, Inc.)	
)	
)	Opposition No. 91284313
Opposer,)	
)	
-against-)	
)	
Maxx Life Performance, LLC)	
)	
Applicant.)	
)	

ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
Attention Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

Applicant, Maxx Life Performance, LLC (hereinafter “Applicant”) hereby responds to the Notice of Opposition as follows:

1. Applicant admits the allegations of this paragraph.
2. Applicant admits the allegations of this paragraph.
3. Applicant admits the allegations of this paragraph.

4. Applicant is without sufficient information to form a belief as to matters set forth in this paragraph. There are multiple other trademark registrations and common law rights owned by unrelated third parties to “Flow” derived trademarks including but not limited to the following:

GATORADE FLOW Registration number 5157792 in class 32 for “Sports drinks”

COSMIC FLOW Registration number 6093509 in class 32 for “Beers; Ales; mineral and aerated waters; non-alcoholic drinks, namely, energy shots; fruit drinks and fruit juices; syrups for making beverages; shandy; de-alcoholized drinks in the nature of beer; non-alcoholic beers and wines; Bottled drinking water; Cola; Concentrated fruit juice; Drinking water with vitamins; Energy drinks; Flavored beer; Frozen fruit-based beverages; Fruit smoothies; Green vegetable juice beverages; India pale ales (IPAs); Pale ale; Isotonic drinks; Lager; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavored with coffee; Powders used in the preparation of fruit-based beverages; Powders used in the preparation of soft drinks; Stout”

POWERFLOW Registration number 6713648 in class 32 for “Energy Drinks.”

FLOWATER Registration number 6747750 in class 32 for “Purified bottled drinking water; drinking water; bottled water.”

5. Applicant is without sufficient information to form a belief as to matters set forth in this paragraph. However, Applicant notes Flow Beverages has defined their advertising to “extensively advertised and offered its drinking water and water-related beverage product.” Additionally, Flow Beverages uses the word “Flow” as their primary trademark and the Applicant uses “Fuel Your Flow” as a tag line for their primary trademark TROOV.

6. Applicant is without sufficient information to form a belief as to matters set forth in this paragraph.

7. Applicant denies the allegations of this paragraph. Applicant argues that while "Flow Glow," "Flow GO" and "Fuel Your Flow" share some common elements, "Fuel Your Flow" is a combination of descriptive terms that creates a unique and distinctive brand name.

8. Applicant denies the allegations of this paragraph.

9. Applicant denies the allegations of this paragraph. Applicant argues its ready to drink energy beverages are not related to drinking water. Ready to drink energy beverages include a variety of additives including cognitive nootropics and herbs. There are unique challenges faced by ready to drink energy beverages including regulatory compliances.

10. Applicant denies the allegations of this paragraph.

11. Applicant denies the allegations of this paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE-ABSENCE OF DAMAGES: Opposer has not and will not be damaged by the registration of the trademark FUEL YOUR FLOW and therefore lacks standing to oppose the registration.

SECOND AFFIRMATIVE DEFENSE- ABSENCE OF LIKELIHOOD OF CONFUSION: Lanham Act Section 2(d)- the marks of the Applicant compared to the mark of the Opposer (a) are different in sound, appearance, meaning and commercial impression; (b) are marketed through different channels of trade; (c) are provided to different type of consumers.

Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant prays that this opposition be dismissed, and that the subject application proceed to registration and for such other and further relief as may be appropriate.

Dated May 8, 2023

Respectfully submitted,

Pollie Gautsch

BY: _____
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Answer to Notice of Opposition on the Attorney of Record for the Applicant by mailing it via First Class Mail postage prepaid, on the 8th of May 2023 at the address indicated below:

Gina Durham, Esq.
DLA PIPER LLP (US)
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SAN FRANCISCO, CA 94105

Pollie Gautsch

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