

TTAB

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

In the matter of trademark Registration No. 2,136,776
Registration Date: February 17, 1998
For the mark: THE WELLNESS RESOURCE

WELLNESS RESOURCES, INC.,
Petitioner,

Cancellation No. 92041697

v.

GRIFFIN, NANCY M.

Registrant

09-24-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

REGISTRANT NANCY GRIFFIN'S ANSWER TO PETITIONER WELLNESS
RESOURCES, INC.'S PETITION FOR CANCELLATION

Registrant Nancy M. Griffin hereby answers Petitioner Wellness Resources, Inc.'s Petition for Cancellation on file herein as follows:

1. Answering paragraph 1, Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

2. Answering paragraph 2, Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

3. Answering paragraph 3, the first sentence asserts a legal conclusion. Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph and on that basis denies each and every allegation contained therein.

4. Answering paragraph 4, Petitioner's alleged federal statutory rights in connection with vitamins and mineral supplements are for a design mark and not the word mark WELLNESS RESOURCES. Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

5. Answering paragraph 5, Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

6. Answering paragraph 6, Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

7. Answering paragraph 7, Registrant admits she is the owner of the THE WELLNESS RESOURCE mark including the associated registration on the U.S. Principal Register. Registrant is without sufficient knowledge or information to form a belief with regard to the remaining allegations of said paragraph, and on that basis denies each and every allegation contained therein.

8. Answering paragraph 8, Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph, and on that basis denies each and every allegation contained therein.

9. Answering paragraph 9, Registrant has senior rights to her service mark THE WELLNESS RESOURCE. Petitioners use of WELLNESS RESOURCES would likely cause confusion, cause mistake, or deceive with regard to Registrant's mark. Registrant denies the allegations of said paragraph.

10. Answering paragraph 10, Registrant denies each and every allegation contained therein.

11. Answering paragraph 11, Registrant denies each and every allegation contained therein.

12. Answering paragraph 12, Registrant denies each and every allegation contained therein.

13. Answering paragraph 13, Registrant admits that her registration provides her with a prima facie exclusive right to use her mark and denies each and every remaining allegation contained therein.

14. Answering paragraph 14, the paragraph asserts a legal conclusion. Registrant is without sufficient knowledge or information to form a belief with regard to the allegations of said paragraph and on that basis denies each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

15. As and for a separate, distinct and affirmative defense, Registrant alleges that Petitioner's petition, and each claim for relief therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

16. As and for a separate, distinct and affirmative defense to Petitioner's petition, and each claim for relief thereof, this answering Registrant alleges that said Petitioner is barred by the applicable statute of limitations including, without limitation, the 5 year bar under the Lanham Act.

THIRD AFFIRMATIVE DEFENSE

17. As and for a separate, distinct and affirmative defense to Petitioner's Complaint, and each claim for relief thereof, this answering Registrant alleges that Petitioner is barred from recovery under the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

18. As and for a separate, distinct and affirmative defense to Petitioner's Complaint, and each claim for relief thereof, this answering Registrant alleges that Petitioner's unclean hands precludes any judgment in favor of Petitioner.

FIFTH AFFIRMATIVE DEFENSE

19. As and for a separate, distinct and affirmative defense to Petitioner's Complaint, and each claim for relief thereof, this answering Registrant alleges Petitioner has waived its claims against this answering Registrant.

SIXTH AFFIRMATIVE DEFENSE

20. As and for a separate, distinct and affirmative defense to Petitioner's Complaint, and each claim for relief thereof, this answering Registrant alleges Petitioner is estopped from asserting its claims against this answering Registrant.

SEVENTH AFFIRMATIVE DEFENSE

21. As and for a separate, distinct and affirmative defense, Registrant alleges that to the extent that Petitioner has developed rights in its mark that are senior to Registrant's, such rights are of a limited geography, and Petitioner is solely entitled to a concurrent use registration of its mark.


WHEREFORE, this answering Registrant prays for judgment as follows:

1. That Petitioner's petition be denied;
2. That Registrant be awarded judgment in her favor; and

3. For such other and further relief as the Trademark Trial and Appeal Board may deem just and proper.

Dated: September 22, 2003

Spaulding McCullough & Tansil LLP

By 

Warren L. Dranit
Attorneys for Registrant
Nancy M. Griffin

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number EV 089409346 US

I hereby certify that REGISTRANT NANCY GRIFFIN'S ANSWER TO PETITIONER WELLNESS RESOURCES, INC.'S PETITION FOR CANCELLATION is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to:

Box TTAB
NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

on September 22, 2003


Rishell E. Peretson

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of REGISTRANT NANCY GRIFFIN'S ANSWER TO PETITIONER WELLNESS RESOURCES, INC.'S PETITION FOR CANCELLATION is being deposited this day with the United States Postal Service, first class postage prepaid, addressed to Applicant's counsel of record as follows:

Stephanie J. James, Esq.
Beck & Tysver, PLLC
2900 Thomas Avenue South, Suite 100
Minneapolis, MN 55416-4477

this 22nd day of September, 2003


Rishell E. Peretson