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

Proceeding	92061754
Party	Defendant Muscle Research, LLC
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Submission	Answer
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Date	08/14/2015
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

USA NUTRACEUTICALS GROUP, INC.)
and)
ULTRA-LAB NUTRITION, INC., d/b/a BEAST) Proceeding No.: 92061754
SPORTS,)
Petitioners,) Petition to Cancel
)
vs.) BEASTDROL
)
MUSCLE RESEARCH, LLC) Registration No. 4,285,944
) Registered: Feb. 5, 2013
Registrant.)
)

REGISTRANT’S ANSWER

Defendant, Muscle Research, LLC (“Registrant”) for its Answer the Petition to Cancel (the “Petition”) of Petitioners, USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports (“Petitioners”), denies each and every allegation contained therein except as hereafter specifically admitted and further responds to each numbered paragraph of the Petition as follows:

PREAMBLE

The preamble paragraph to the Petition requires no response from Registrant; however to the extent a response is required, Registrant denies the allegations set forth therein.

PARTIES

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 1 of the Petition, and therefore denies the same.
2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 2 of the Petition, and therefore denies the same.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 3 of the Petition, and therefore denies the same.
4. Registrant admits the allegations set forth in ¶ 4 of the Petition.

OPPOSED REGISTRATION

5. Registrant admits the allegations set forth in ¶ 5 of the Petition only to the extent that Petitioners sent a cease and desist letter and Registrant responded through its counsel; however, Registrant denies the remainder of the allegations in ¶ 5, including without limitation, the implication that Registrant gave assurances that it was no longer using the mark BEASTDROL. Petitioners have taken Registrant's correspondence out of context and misunderstood any statements made by Registrant's prior counsel. Registrant has continuously used the mark BEASTDROL in commerce since at least December 1, 2009. Registrant owed no duty to provide Petitioners with any update on their business, marketing, or application for registration of the mark.

6. Registrant denies the allegations set forth in ¶ 6 of the Petition that it gave assurances it was no longer using the BEASTDROL mark. Registrant admits the allegations set forth in ¶ 6 of the Petition that Registrant was granted the Registration for the BEASTDROL mark. Registrant further adds that Registrant did not have any further correspondence from Petitioners, despite the public application registration pending with the United States Patent and Trademark Office ("USPTO") and the public notice for opposition period. Petitioners did not raise or file any objection despite their knowledge of Registrant's use of the BEASTDROL mark.

PETITIONERS' TRADEMARK RIGHTS

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 7 of the Petition, and therefore denies the same.

8. Registrant admits the allegations set forth in ¶ 8 of the Petition to the extent the USPTO concurs with the accuracy and validity of the registration identified in Exhibit B to the Petition.

9. Registrant admits the allegations set forth in ¶ 9 of the Petition to the extent the USPTO concurs with the accuracy and validity of the registration identified in Exhibit C to the Petition.

10. Registrant admits the allegations set forth in ¶ 10 of the Petition to the extent the USPTO concurs with the accuracy and validity of the registration identified in Exhibit D to the Petition.

11. Registrant admits the allegations set forth in ¶ 11 of the Petition to the extent the USPTO concurs with the accuracy and validity of the registration identified in Exhibit E to the Petition.

12. Registrant admits the allegations set forth in ¶ 12 of the Petition to the extent the USPTO concurs with the accuracy and validity of the registration identified in Exhibit F to the Petition.

13. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 13 of the Petition, and therefore denies the same.

14. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 14 of the Petition, and therefore denies the same.

15. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 15 of the Petition, and therefore denies the same.

16. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 16 of the Petition, and therefore denies the same.

17. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 17 of the Petition, and therefore denies the same.

18. ¶ 18 to the Petition requires no response from Registrant; however to the extent a response is required, Registrant denies the allegations set forth therein.

19. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 19 of the Petition, and therefore denies the same.

COUNT 1 – PRIORITY AND LIKELIHOOD OF CONFUSION

20. ¶ 20 to the Petition requires no response from Registrant; however to the extent a response is required, Registrant denies the allegations set forth therein.

21. Registrant denies the allegations set forth in ¶ 21 of the Petition.

22. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 22 of the Petition, and therefore denies the same.

23. Registrant denies the allegations set forth in ¶ 23 of the Petition.

24. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 24 of the Petition, and therefore denies the same.

25. Registrant denies the allegations set forth in ¶ 25 of the Petition. Registrant's application for the mark BEASTDROL was not opposed, and the mark was registered with the USPTO.

26. Registrant denies the allegations set forth in ¶ 26 of the Petition.

27. Registrant denies the allegations set forth in ¶ 27 of the Petition.

REQUEST FOR RELIEF

The request for relief requires no response from Registrant; however to the extent a response is required, Registrant denies the allegations set forth therein.

REGISTRANT'S AFFIRMATIVE DEFENSES

Registrant hereby states the following affirmative defenses to the Petition, but does not assume the burden of proof on any such defenses except as required by applicable law with respect to the particular defense asserted.

1. Petitioners' claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

2. Petitioners' claims are barred, in whole or in part, for failure to show a likelihood of confusion.

3. Petitioners' claims are barred, in whole or in part, by the doctrine of laches.

4. Petitioners' claims are barred, in whole or in part, by the doctrine of waiver.

5. Petitioners' claims are barred, in whole or in part, by the doctrine of estoppel.
6. Petitioners' claims are barred, in whole or in part, by the doctrine of acquiescence.
7. Petitioners' claims are barred, in whole or in part, by the doctrine of unclean hands.
8. Registrant reserves the right to amend its Answer to include additional general or affirmative defenses upon completion of discovery.

WHEREFORE, having fully answered, the Registrant, prays that Petitioners take nothing by way of their Petition and that the Cancellation proceeding be dismissed.

Respectfully Submitted,

/s/ Cori D. Powell
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Nicholas M. Jones, OBA No. 22612
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E-mail: njones@barrowgrimm.com

ATTORNEYS FOR REGISTRANT
MUSCLE RESEARCH, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2015, I electronically transmitted the foregoing document to the following:

Ryan M. Kaiser
Saira J. Alikhan
Ashley Nelson
ryan@amintalati.com
saira@amintalati.com
Ashley@amintalati.com

I further certify that on the 14th day of August, 2015, I served a true and correct copy of the above and foregoing instrument by first class mail, with proper postage fully prepaid thereon, on the following:

Ryan M. Kaiser
Saira J. Alikhan
Ashley Nelson
55 W. Monroe St., Suite 3400
Chicago, IL 60603
UNITED STATES

/s/Cori D. Powell
Cori D. Powell