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

Proceeding no.	92078571
Party	Defendant Suzhou Win Health International Co., LTD
Correspondence address	L. S. VANLANDINGHAM III 91 LAKEMASTER LANE LAKE HAVASU CITY, AZ 86403 UNITED STATES Primary email: Lsvanlan@hotmail.com 301-515-4544
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Date	01/04/2022
Attachments	Answer to Petition for Cancellation 01-04-2022.pdf(479321 bytes)

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

HI-TECH PHARMACEUTICALS, INC.	:	
	:	
Petitioner,	:	Cancellation No. 92078571
	:	
v.	:	Registration Nos. 4412175 & 4485251
	:	
SUZHOU WIN HEALTH	:	Mark: AGMAPURE
INTERNATIONAL CO., LTD.	:	Mark: AGMAPURE with design
	:	
Respondent.	:	

ANSWER TO PETITION FOR CANCELLATION

Commissioner for Trademarks
Post Office Box 1451
Alexandria, VA 22313-1451

Dear Sir:

The Respondent, SUZHOU WIN HEALTH INTERNATIONAL CO., LTD., a corporation formed under the laws of China, (hereinafter "Respondent"), by and through its undersigned attorney, responds as follows to each of the numbered paragraphs constituting the grounds for cancellation contained in the Petition for Cancellation dated December 3, 2021 by HI-TECH PHARMACEUTICALS, INC. (hereinafter "Petitioner") as follows:

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PETITIONER'S PARAGRAPH 1. Petitioner is a corporation organized and existing under the laws of the State of Georgia, having a place of business at 6015 Unity Drive, Suite B, Norcross, Georgia 30071. Petitioner manufactures, markets, sells, and distributes dietary and nutritional supplements.

ANSWER 1 - DENIAL DUE TO INSUFFICIENT INFORMATION –

Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments in the first numbered paragraph of the Petition to Cancel. Pursuant to 37 CFR 2.106(b)(2), 37 CFR 2.114(b)(2) and TBMP 311.02, this has the effect of a denial.

PETITIONER'S PARAGRAPH 2. Upon information and belief, Registrant is a corporation organized and existing under the laws of China.

ANSWER 2. - ADMISSION

PETITIONER'S PARAGRAPH 3. On December 3, 2021, Petitioner filed an application for the trademark AGMAPURE for “Dietary and nutritional supplements ; Natural extract sold as an essential ingredient of dietary supplements; Standardized extract formulated with nutritional items for use as a dietary supplement,” in International Class 005. Petitioner’s trademark was assigned Application Serial No. 97155224.

ANSWER 3 - ADMISSION

PETITIONER'S PARAGRAPH 4. Based on Petitioner's research, information and belief, Registrant ceased use of the trademarks at U.S. Registration Nos. 4412175 and 4485251.

ANSWER 4 - DENIAL

PETITIONER'S PARAGRAPH 5. Based on Petitioner's research, information and belief, Registrant does not have an intent to resume use of the marks.

ANSWER 5 - DENIAL

PETITIONER'S PARAGRAPH 6. On information and belief, any goodwill that may have been associated with the trademark at U.S. Registration Nos. 4412175 and 4485251 has been destroyed due to Registrant's non-use of the mark in commerce.

ANSWER 6 - DENIAL

PETITIONER'S PARAGRAPH 7. Petitioner will be damaged by the continued registration of Registrant's trademarks at U.S. Registration Nos. 4412175 and 4485251 because such registrations will be cited as a basis for refusal of Petitioner's trademark application at Application Serial No. 97155224.

ANSWER 7 - DENIAL DUE TO INSUFFICIENT INFORMATION –

Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments in the seventh numbered paragraph of the Petition to Cancel. Pursuant to 37 CFR 2.106(b)(2), 37 CFR 2.114(b)(2) and TBMP 311.02, this has the effect of a denial.

AFFIRMATIVE PLEADINGS

Pursuant to TBMP 311.02(d), an answer may include affirmative assertions that state the reasons for, and thus amplify, the defendant's denial of one or more of the allegations in the complaint. Affirmative assertions are permitted by the Board when they serve to give the plaintiff fuller notice of the position which the defendant plans to take in defense of its right to registration. Respondent includes the following affirmative assertions which amplify the Respondent's denial of one or more of the allegations in the complaint:

FIRST AFFIRMATIVE ASSERTION:

Respondent strongly denies the assertions made in the fourth numbered paragraph of the Petition for Cancellation. Respondent has not ceased use of the trademarks shown in Registration Nos. 4412175 and 4485251, and continues to use these trademarks in commerce within the United States. Respondent can provide recent purchase orders, invoices, packing lists, shipping documents and FDA prior notices in support of the current use of these trademarks within the United States.

SECOND AFFIRMATIVE ASSERTION:

Respondent denies the assertions made in the fifth numbered paragraph of the Petition, inasmuch as they are predicated on the false assumption that Respondent has in fact stopped using these trademarks. The Petition alleges that "Registrant does not have an intent to resume use of the marks." One cannot resume use of the marks unless they

have stopped using the marks in the first place. Respondent categorically denies that it has ceased use of the trademarks. Respondent is currently using these trademarks and intends to continue using these marks in commerce within the United States. Since the assertions in the fifth paragraph of the Petition are based upon a false assumption, the Respondent must issue a denial.

THIRD AFFIRMATIVE ASSERTION:

Respondent denies the assertions made in the sixth numbered paragraph of the Petition, inasmuch as they are predicated on the false assumption of "Registrant's non-use of the mark in commerce." Respondent strongly denies that it has ceased use of the trademarks. Through the continued use of these marks in commerce within the United States, Respondent has maintained the goodwill associated with the marks. Since the assertions in the sixth paragraph of the Petition are based upon a false assumption, the Respondent must issue a denial.

FOURTH AFFIRMATIVE ASSERTION:

Respondent has not abandoned its rights in these registered marks by virtue of non-use or discontinued use of the mark with intent not to resume such use. In fact, Respondent continues to use these marks in commerce within the United States. Furthermore, Respondent has no intention to cease using these marks or abandon these marks in the future.

* * * * *

AFFIRMATIVE DEFENSES

Pursuant to TBMP 311.02(b), Respondent also asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE: Petitioner does not have standing to pursue the claims set forth in its Petition for Cancellation.

SECOND AFFIRMATIVE DEFENSE: Petitioner has failed to state a claim for which relief can be granted.

THIRD AFFIRMATIVE DEFENSE: Respondent reserves the right to raise and plead additional affirmative defenses as they become known during its ongoing investigation and discovery.

* * * * *

WHEREFORE, Respondent requests that this Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,



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Dated: January 4, 2022

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO PETITION FOR CANCELLATION has been served on the attorney for Petitioner, Gregory L. Hillyer, Esq., by forwarding said copy on January 4, 2022, via email to:

Gregory L. Hillyer, Esq.
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Date: January 4, 2022