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

Proceeding	91162473
Party	Defendant Only Nine Apparel, LLC Only Nine Apparel, LLC 1407 Broadway, Suite 1101 New York, NY 10018
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Submission	Answer
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Date	11/18/2004
Attachments	9westanswer.PDF (6 pages)

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

NINE WEST DEVELOPMENT CORPORATION)	
)	
Opposer,)	
)	
v.)	Opposition Proceeding No. 91162473
)	Appl. Ser. Nos.: 76/557,010
ONLY NINE APPAREL, LLC,)	76/557,011
)	
Applicant.)	
_____)	

ANSWER AND AFFIRMATIVE DEFENSES

Applicant ONLY NINE APPAREL, LLC (hereinafter “Applicant”), by its attorneys, Pryor Cashman Sherman & Flynn LLP, as and for its Answer to the claims asserted in the Notice of Opposition (hereinafter “Opposition”) filed on behalf of Opposer NINE WEST DEVELOPMENT CORPORATION (hereinafter “Opposer”), denies that Opposer will be damaged by the registration of Applicant’s marks STUDIO NINE and STUDIO 9 as set forth in Appl. Ser. Nos. 76/557,010 and 76/557,010, respectively. With respect to the specific assertions in the Opposition, Applicant respectfully responds as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Opposition.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Opposition.

3. Applicant admits that Opposer has registered trademarks that include the wording NINE WEST, but denies that its alleged NINE WEST trademark is “one of the most popular and famous brands in the world” as alleged in Paragraph 3 of the Opposition.

4. Upon information and belief, Applicant admits that U.S. Patent and Trademark Office (hereinafter “USPTO”) records reflect Opposer as the alleged owner of the U.S. trademark registration numbers set forth in Paragraph 4 of the Opposition.

5. Upon information and belief, Applicant admits that USPTO records reflect Opposer as the alleged owner of the U.S. trademark registration numbers set forth in Paragraph 5 of the Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Opposition.

10. Upon information and belief, Applicant admits that USPTO records reflect Opposer as the alleged owner of the U.S. trademark registration number set forth in Paragraph 10 of the Opposition.

11. Upon information and belief, Applicant admits that USPTO records reflect Opposer as the alleged owner of the published U.S. trademark Application serial numbers set forth in Paragraph 11 of the Opposition.

12. Applicant admits the allegations set forth in Paragraph 12 of the Opposition.

13. Applicant denies the allegations set forth in Paragraph 13 of the Opposition.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Opposition.

15. Applicant is without knowledge or information sufficient to form a belief as to whether Opposer has “exercised great care, skill and diligence in providing footwear and accessories in connection with its NINE WEST STUDIO Marks”. Applicant denies the remainder of the allegations set forth in Paragraph 15 of the Opposition.

16. Applicant admits the allegations set forth in Paragraph 16 of the Opposition.

17. Applicant admits the allegations set forth in Paragraph 17 of the Opposition.

18. Applicant denies the allegations set forth in Paragraph 18 of the Opposition.

19. Applicant denies the allegations set forth in Paragraph 19 of the Opposition.

20. Applicant denies the allegations set forth in Paragraph 20 of the Opposition.

21. Upon information and belief, Applicant admits the allegations set forth in Paragraph 21 of the Opposition except that with respect to Applicant’s Ser. No. 76/557,011, USPTO records do not reflect the Opposition as timely filed.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Opposition fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Applicant has prior rights in and to the “STUDIO 9” and “STUDIO NINE” trademarks inclusive of variations thereof.

THIRD AFFIRMATIVE DEFENSE

Opposer’s claims are barred by the equitable doctrines of waiver, estoppel, laches, acquiescence and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Opposer lacks standing to assert its claims.

WHEREFORE, Applicant requests that judgment be entered in its favor and that Opposition No. 91162473 be dismissed in its entirety, and with prejudice.

Dated: November 18, 2004
New York, New York

Respectfully submitted,

By: 

Brad D. Rose, Esq.
Teresa A. Lee, Esq.
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Certificate of Service

I hereby certify this day that the foregoing ANSWER AND AFFIRMATIVE DEFENSES was deposited in the United States Mail, first class, postage prepaid and addressed as follows:

Jennifer Shmulewitz
Nine West Footwear Corporation
1129 Westchester Avenue
White Plains, NY 10604

This the 18th day of November, 2004.



Jeffrey B. Sladkus

Certificate of Mailing

I hereby certify that this ANSWER AND AFFIRMATIVE DEFENSES have been filed with the Trademark Trial and Appeal Board through its ESTTA Service on November 18, 2004.



Jeffrey B. Sladkus