

ESTTA Tracking number: **ESTTA295102**

Filing date: **07/14/2009**

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

Proceeding	91189169
Party	Defendant Xtreme Couture, Inc
Correspondence Address	Edward Jaffe Jaffe, Ross & light LLP 880 Third Avenue New York, NY 10022 ejaffe@jrllaw.com, ngreenfield@jrllaw.com
Submission	Answer
Filer's Name	Edward Jaffe
Filer's e-mail	ejaffe@jrllaw.com
Signature	/Edward Jaffe/
Date	07/14/2009
Attachments	Natural Couture v Xtreme Couture opposition response.pdf (2 pages)(6911 bytes)

ANSWER TO OPPOSITION AND AFFIRMATIVE DEFENSES

In the matter of the application for registration of the trademark XTREME COUTURE, filed by Xtreme Couture, Inc. (“Applicant”) as shown in Application Serial No. 77/464760 published for opposition in the Official Gazette of October 7, 2008.

Applicant responds to the Opposition filed by Natural Couture, Inc. (“Opposer”) 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, whereby Applicant denies each and every of the said allegations.
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, whereby Applicant denies each and every of the said allegations.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Opposition, whereby Applicant denies each and every of the said allegations.
4. In response to paragraph 4 of the Opposition, Applicant admits that its registration No. 3489504 for the mark XTREME COUTURE claims a first date of use of June 15, 2007. However, under 15 U.S.C. 1057(c), the nationwide constructive use date of the mark XTREME COUTURE by Applicant is March 16, 2007.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Opposition, whereby Applicant denies each and every of the said allegations.
6. In response to paragraph 6 of the Opposition, Applicant admits that it is the owner of the mark XTREME COUTURE and that Opposer alleges ownership of an identical mark.
7. Applicant denies each and every allegation set forth in paragraph 7 of the Opposition.
8. Applicant denies each and every allegation set forth in paragraph 8 of the Opposition.

AND AS A FIRST AFFIRMATIVE DEFENSE

Opposer cannot be injured by the registration of Applicant's mark. Applicant is the owner of Registration No. 3489504 for the mark XTREME COUTURE covering virtually identical goods in class 25.

AND AS A SECOND AFFIRMATIVE DEFENSE

Opposer has waived its right to seek the relief sought and is estopped from bringing this action as it, over the past two years has been a 40% owner of the Applicant, has specifically consented to Applicant's use and registration of the mark XTREME COUTURE, has promoted the sale of such goods and has profited therefrom.

AND AS A THIRD AFFIRMATIVE DEFENSE

Opposer is estopped from seeking the relief sought as its actions, omissions, representations and courses of conduct were relied on by Applicant, to its detriment.

AND AS A FOURTH AFFIRMATIVE DEFENSE

Opposer is barred from seeking the relief sought on the grounds that its conduct constitutes unclean hands.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed, in its entirety and that Application No. 77/464760 proceed to registration.