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

Proceeding	91193817
Party	Defendant Moody, Matthew D
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Attachments	91193817 Answer and Affirmative Defenses to Notice of Opposition.pdf (5 pages)(130633 bytes)

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

MICHAEL OMMAHA, Opposer, v. MARY JANE'S SODA INC., Applicant.	))))))))))	Opposition No. 91193817 **ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION**

Applicant Mary Jane's Soda Inc. ("Applicant") answers the following paragraphs of the Notice of Opposition filed by Michael Ommaha ("Opposer") as follows:

1. Applicant admits that on January 2, 2009, Matthew D. Moody filed a trademark application, Serial No. 77/642,501 for the mark MARY JANE'S SODA under Section 1(b). Applicant further admits that the Subject Application lists the following goods in International Class 5: Nutritionally fortified beverages, namely, for relieving stress, reducing anxiety, and improving mood. In addition, Applicant admits that on April 1, 2009, Matthew D. Moody's counsel filed an allegation to allege use claiming January 21, 2009 as its first use anywhere date and first use in commerce date. Except as admitted herein, the allegations in this paragraph are denied.

2. Applicant lacks information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

3. Applicant lacks information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

4. Applicant lacks information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.

5. Applicant admits that on January 2, 2009 Matthew D. Moody filed an application for the mark MARY JANE'S SODA under Section 1(b) and listed "limited liability company" as the legal entity type. Applicant admits that on March 30, 2009, an Office Action was issued stating as follows: "The name of an individual person appears in the section of the application intended for the trademark owner's name; however, the entity type is set forth as limited liability company. Applicant must clarify this inconsistency." Applicant admits that that in an Office Action response dated March 26, 2009, the Applicant information for Matthew D. Moody was changed from "limited liability company" to "individual." Except as admitted herein, the allegations in this paragraph are denied.

6. Applicant admits that on April 1, 2009, Matthew D. Moody's counsel filed an allegation to allege use claiming January 21, 2009 as its first use anywhere date and first use in commerce date. Applicant further admits that on January 21, 2009, Articles of Incorporation for a Profit Corporation were filed with the Colorado Secretary of State for Mary Jane's Soda Inc. In addition, Applicant admits that Matthew D. Moody has not used the MARY JANE'S SODA mark in commerce as an individual. Except as admitted herein, the allegations in this paragraph are denied.

7. Deny.

8. Deny.

9. Deny.

10. Deny.

11. Deny.

12. Deny.

13. Deny.

14. Deny.

15. Deny.

16. Deny.

To the extent there are any other allegations in the Notice of Opposition that require an answer, such allegations are denied.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses, each of which bars Opposer's claims in whole or in part.

1. Opposer fails to state a basis for opposing upon which relief may be granted.

2. Opposer claims are barred based on its unclean hands in seeking to register a mark because, on information and belief, Applicant's filing date predates Opposer's filing date and Applicant is using its mark in interstate commerce.

3. Opposer lacks standing to bring this Notice of Opposition as it is not likely to be damaged by the continuing registration of the MARY JANE'S SODA mark.

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Dated: March 29, 2010

FAEGRE & BENSON LLP,
as Attorneys for Mary Jane's Soda Inc.

By: s/Jennifer Daniel Collins

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CERTIFICATE OF SERVICE

I, Jeanne A. Cook, do hereby certify that a true and correct copy of the above and foregoing document has been forwarded by United States mail, first class, postage prepaid, to:

Christine L. Kopitzke, Attorney at Law
735 State Street, Suite 532
Santa Barbara, CA 93101

as attorney for Opposer Michael Ommaha, this 29th day of March, 2010.

Jeanne A. Cook