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

Proceeding	91195137
Party	Defendant Danielle Dzurik
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Date	07/13/2010
Attachments	ANSWER TO NOTICE OF OPPOSITION.pdf (6 pages)(140410 bytes) Signature PGS.pdf (2 pages)(205191 bytes)

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

Unilever Supply Chain, Inc.

Opposer,

v.

Danielle Dzurik

Applicant

Opposition No. 91195137

Serial No. 77831621

Mark: PUPSICLES

ANSWER TO NOTICE OF OPPOSITION

The following is the Answer of Danielle Dzurik (hereinafter “Applicant”), owner of Federal Trademark Application Serial No. 77831621 for the mark PUPSICLES to the Notice of Opposition served June 2, 2010 by Kristin H. Altoff of Morgan, Lewis & Bockius LLP on behalf of the Unilever Supply Chain, Inc. (hereinafter “Opposer”), and assigned Opposition No. 91195137.

Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition as follows:

1. Applicant admits the allegations of Paragraph 1 to the extent that the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed.

2. Applicant admits the allegations of Paragraph 2 to the extent that the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed.
3. Applicant admits the allegations of Paragraph 3 to the extent that the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in Paragraph 4 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in Paragraph 5 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in Paragraph 6 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
7. Denied.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. Admitted.
13. Applicant acknowledges Opposer's exclusive rights to the SICLE Marks that the Opposer references in Paragraph 1 of the Notice of Opposition.
14. Applicant acknowledges Opposer's superior rights to the SICLE Marks that the Opposer references in Paragraph 1 of the Notice of Opposition.
15. Admitted.
16. Admitted.
17. Admitted.
18. Denied. Applicant is without knowledge or information as to Opposer's belief that they will be damaged by the registration of Applicant's mark upon the Principal Register. Applicant denies that such registration will deceive consumers into believing the Applicant's products emanate from, are sponsored by, or authorized by, or are otherwise associated or affiliated with Opposer.
19. Denied. Applicant is without knowledge or information as to Opposer's belief that they will be damaged by the registration of Applicant's mark upon the Principal Register. Applicant denies that such registration will dilute Opposer's marks.

In addition, Applicant sets forth the following affirmative defenses and statements in support of its position:

20. While the Opposer owns the rights to use POPSICLE (Reg. No. 2,421,400) POPSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 2,421,400), CREAMSICLE (Reg. No. 1,839,541), CREAMSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,719), FUDGSICLE (Reg. No. 434,594),

FUDGSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,717), and CHOCSICLE (Reg. No. 3,178,063) (hereinafter collectively referred to as the “Opposer’s SICLE Marks”), the Opposer does not own the rights to “SICLE”.

21. Opposer does not claim the exclusive right to use “SICLE”, apart from use in the registered Opposer’s SICLE Marks.

22. “Trademarks registered on the Principal Register of the United States Patent and Trademark Office which contain the term “SICLE” include, but are not limited to:

Mark	Registration Number	Registration Date	Register	Class	Goods
CARDSICLE	3399958	March 18, 2008	Principal	IC 020	Nonedible, plastic credit card holders in which credit cards can be frozen for safe keeping.
CARDSICLE CREDIT CARD SPENDING. STOP IT COLD. (and Design)	3399959	March 18, 2008	Principal	IC 020	Nonedible, plastic credit card holders in which credit cards can be frozen for safe keeping.

SMUDGESICLE	2304635	December 28, 1999	Principal	IC 003	Cosmetics, namely, eye shadow.
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23. The trademarks registered on the Principal Register of the United States Patent and Trademark Office which contain the term “SICLE” that are referenced above are all registered after one or more of the Opposer’s SICLE Marks.
24. The trademarks registered on the Principal Register of the United States Patent and Trademark Office which contain the term “SICLE” that are referenced above are all registered in classes in which the Opposer’s SICLE Marks are not registered.
25. The Applicant’s mark in Application Serial No. 77831621 is filed in Class 021.
26. The Opposer’s SICLE Marks that were cited by Opposer as basis for Opposition are not registered in Class 021.
27. As there are other “SICLE” marks registered in classes other than the classes in which the Opposer’s SICLE Marks are registered, there is evidence that the Applicant’s use of “SICLE” in a class in which the Opposer’s SICLE Marks are not registered should not dilute, blur or tarnish the Opposer’s SICLE Marks.
28. The Opposer’s SICLE Marks allow the Opposer exclusive rights to use these marks in commerce in connection with the goods specified in the registration.
29. The Opposer’s SICLE Marks are all registered in connection with edible frozen confections listed as the goods.

30. The mark in Application Serial No. 77831621 is filed in connection with a nonedible plastic form, intended to be used for making ice treats for dogs.
31. The goods specified in the registration of the Opposer's SICLE Marks are very different from the goods specified in the Applicant's mark and have clearly distinct purposes.
32. The goods specified in the registration of the Opposer's SICLE Marks have different end users from the goods specified in the Applicant's mark (humans vs. canines, respectively).
33. The goods specified in Applicant's mark would not be sold in the same type of stores as the goods specified in the registration of the Opposer's SICLE Marks.
34. The goods specified in the Applicant's mark would not compete with the goods specified in the registration of the Opposer's SICLE Marks.
35. Applicant's mark and Opposer's SICLE Marks are not likely to cause confusion, mistake or deception to purchasers as to the source of the Opposer's goods.
36. While the first syllable of the Applicant's PUPSICLES is different from the Opposer's POPSICLE only by the use of a "U" instead of an "O", the two words are different entities. "POP" refers to a lollipop, while "PUP" references canines, who are the Applicant's intended end user.
37. Applicant's mark and Opposer's POPSICLE mark are different in spelling.
38. Applicant's mark and Opposer's POPSICLE mark are different in meaning.
39. The Applicant's use of "PUP" highlights the distinctly different markets between the Applicant's and the Opposer's goods. Rather than cause confusion, "PUP" highlights that the product is intended for canines.

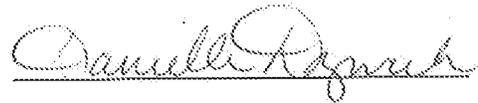
40. Applicant's mark does not and cannot dilute Opposer's SICLE Marks.

41. Applicant's mark does not falsely suggest a connection with Opposer's SICLE Marks.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be rejected and that Applicant's mark be allowed to proceed to registration.

Dated: June 13, 2010

Respectfully Submitted,

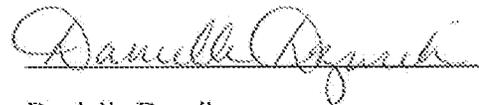


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of ANSWER TO NOTICE OF OPPOSITION has been served on the following by delivering said copy on July 13, 2010, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Kristin H. Altoff
Morgan, Lewis & Bockius LLP
Attn: TMSU
111 Pennsylvania Ave., NW
Washington, DC 20004

A handwritten signature in cursive script, reading "Danielle Dzurik", written over a horizontal line.

Danielle Dzurik