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

Proceeding	91198614
Party	Defendant Ooh La La! Jewelry and Accessories, Inc.
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Date	03/28/2011
Attachments	Answer to 614 Opposition.pdf (7 pages)(19985 bytes)

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

To the Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

In the matter of Application Serial No. 77/931467, Published in the Official Gazette on
October 19, 2010, Mark: OOH LA LA! JEWELS DU JOUR

OOH LA LA! LADIES CONSIGNMENT)
BOUTIQUE, INC., a Florida corporation,)
and TRACI MACARO, an individual,)

Opposers,)

Opposition No. 91198614

OOH LA LA! JEWELRY AND)
ACCESSORIES, INC.,)
a Florida corporation,)
Applicant.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the original of this Answer is being electronically filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office through the web site at <http://esta.uspto.gov> on March 28, 2011.

/JENNIFER L. WHITELAW
JENNIFER L. WHITELAW

APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSITION

Applicant, OOH LA LA! JEWELRY AND ACCESSORIES, INC. (hereinafter “Applicant”), hereby files its Answer and Affirmative Defenses to the Opposition filed by

Opposers, OOH LA LA! LADIES CONSIGNMENT BOUTIQUE, INC. and TRACI MACARO, (hereinafter "Opposers"), and states as follows:

1. Applicant states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 1.
2. Applicant admits that it maintains a physical location in Collier County, Florida and further states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 2.
3. Applicant states that the referenced federal public records speak for themselves, and denies the remainder of the allegations of paragraph 3.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies same.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies same.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies same.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies same.
8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies same.
9. Applicant states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 9.
10. Applicant states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 10.

11. Applicant states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 11.
12. Applicant states that the referenced federal public record speaks for itself, and denies the remainder of the allegations of paragraph 12.
13. Applicant denies the allegations of paragraph 13.
14. Applicant denies the allegations of paragraph 14.
15. Applicant denies the allegations of paragraph 15.
16. Applicant denies the allegations of paragraph 16.
17. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies same.
18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies same.
19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies same.
20. Applicant denies the allegations of paragraph 20.
21. Applicant denies the allegations of paragraph 21.
22. Applicant denies the allegations of paragraph 22.

Applicant further denies each, every and all of the remaining allegations asserted by Opposers in all counts and/or paragraphs of the Notice of Opposition which are not expressly admitted to be true herein and, based on present knowledge and belief, sets forth its following Affirmative Defenses.

FIRST AFFIRMATIVE DEFENSE

Applicant's mark is not confusingly similar to Opposers' mark with respect to the goods or services as set forth in the application, nor would use and/or registration of Applicant's mark create a likelihood of confusion in the marketplace.

SECOND AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Opposers' assertion of rights against Applicant is barred, in whole or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Opposers' Opposition is barred, in whole or in part, by the doctrine of acquiescence.

FIFTH AFFIRMATIVE DEFENSE

Opposers' Opposition is barred, in whole or in part, by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Opposers' Opposition is barred, in whole or in part, by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Opposers are not the real party in interest to enforce all or some of the rights claimed in this action.

EIGHTH AFFIRMATIVE DEFENSE

Opposers will not be harmed by Applicant's registration and therefore lacks standing to oppose the subject Application.

ADDITIONAL AFFIRMATIVE DEFENSES RESERVED

Applicant specifically reserves the right to assert such additional Affirmative Defenses as may be found to be applicable through or following discovery in this Opposition.

WHEREFORE, having fully answered and set forth its Affirmative Defenses as required, Applicant requests that the Opposition herein be dismissed with prejudice at the cost of Opposers, and that registration of Applicant's mark be allowed.

Respectfully submitted,

/JENNIFER L. WHITELAW/
JENNIFER L. WHITELAW
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSITION** was mailed to:

Edward M. Livingston, Esquire, eml@thelivingstonfirm.com
Erica L. Loeffler, Esquire ell@thelivingstonfirm.com
THE LIVINGSTON FIRM tlf@thelivingstonfirm.com
963 Trail Terrace Drive
Naples, FL 34103

via electronic service on March 28, 2011.

/JENNIFER L. WHITELAW/
JENNIFER L. WHITELAW