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

Proceeding	91202948
Party	Defendant Apollo Sprayers International, Inc.
Correspondence Address	WALTER A HACKLER PATENT LAW OFFICE 2372 SE BRISTOL ST , STE B NEWPORT BEACH, CA 92660-0755 UNITED STATES
Submission	Answer
Filer's Name	H. Daniel Fuller
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Date	01/18/2012
Attachments	011812 APP ANS TO OPP.pdf (5 pages)(177226 bytes)

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

DAVID A. KAY AND)	Opposition No. 91202948
CHRISTOPHER N. CRAMER)	
)	Mark: MAXIMIST
Opposers,)	
)	Application Serial No. 85/225,969
v.)	
)	
APOLLO SPRAYERS)	
INTERNATIONAL, INC.,)	
)	
Applicant.)	
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Apollo Sprayers International, Inc., a California corporation (“Applicant”) has filed an application (intent to use) for the mark “MAXIMIST” bearing Application Number 85/225,969. A Notice of Opposition has been filed by David A. Kay and Christopher N. Cramer (“Opposers”). Applicant hereby responds to the Notice of Opposition (the numbered paragraphs below correspond to the same numbered paragraphs of the Notice of opposition) as follows:

1. Admitted.
2. Admitted.
3. Applicant admits that Opposers’ MAXIMIST mark was filed May 11, 2011 bearing Serial No. 85/317,895 and that it claims a first use date in commerce of January 21, 2008. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Notice of Opposition. Since Applicants can neither admit nor deny the remaining allegations as written, Applicant must deny them.
4. Admitted.

5. Denied.
6. Admitted.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
8. Applicant admits that Tampa Bay Tan, LLC offers for sale various types of spray tanning machines under the mark "MAXIMIST". Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 of the Notice of Opposition. Since Applicant can neither admit nor deny the remaining allegations as written, Applicant must deny them.
9. Admitted.
10. Admitted.
11. Denied.
12. Admitted.
13. Applicant admits that the parties' respective marks are identical, that the goods covered by the marks are closely related and that they would likely cause confusion in the marketplace. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 13 of the Notice of Opposition. Since Applicant can neither admit nor deny the remaining allegations as written, Applicant must deny them.
14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
16. Denied.
17. Denied.

AFFIRMATIVE DEFENSES

18. Opposers lack standing to pursue this Opposition.
19. Opposers Notice of Opposition fails to state a claim upon which relief can be granted.
20. Opposers are not entitled to relief because Applicant's Application predates the application of the Opposers.
21. Opposers are not entitled to register the mark MAXIMIST because that mark not only postdates and would infringe Application 85/225,969 but it would also infringe the family of marks owned and in use by Applicant in the spray tanning equipment industry: (i) MINIMIST (US Reg. No. 3334202); (ii) WHISPER-MIST (US Reg. No.3333307); (iii) SUNMIST; and (iv) MOBILE-MIST. Applicant is one of the top manufacturers of spray tanning equipment in the United States and its name and products are well known in the industry. Opposers have been distributors of Applicant's equipment bearing Applicant's various marks and have been and are very much aware of the existence and strength of these marks in the tanning industry and have intentionally sought to capitalize on the good will and brand recognition built by Applicant by using and now seeking registration of the term MAXIMIST.
22. Applicant reserves the right to assert such other affirmative pleadings and defenses as discovery in this case discloses a basis therefore.

WHEREFORE, having fully responded to Opposers Notice of Opposition, Applicant respectfully requests that the Board enter a decision in its favor; order that the Opposition be dismissed; permit the registration of Applicant's mark; and grant Applicant such other and further relief as the Board may be deem just and proper.

Respectfully submitted,

Dated: January 18, 2012

CADDEN & FULLER LLP



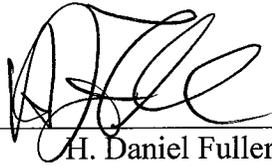
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Attorneys for Applicant

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 January 18, 2012, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Boris Umansky
Leydig, Voit & Mayer, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson
Chicago, Illinois 60601

By:



H. Daniel Fuller