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

Proceeding	91203733
Party	Defendant Abady, Glen
Correspondence Address	ALAN A. HELLER HELLER, HOROWITZ & FEIT, P.C. 292 MADISON AVE NEW YORK, NY 10017-6307 aaheller@hhandf.com
Submission	Answer
Filer's Name	Alan A. Heller
Filer's e-mail	aaheller@hhandf.com
Signature	/Alan A. Heller/
Date	03/19/2012
Attachments	abadydrbeatanswerandaffirmativedefenses03192012.pdf (5 pages)(152168 bytes)

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

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BEATS ELECTRONICS, LLC,

Opposition No. 91203733

Opposer,

-against-

GLEN ABADY,

Applicant.

----------X

ANSWER AND AFFIRMATIVE DEFENSES

Applicant, GLEN ABADY ("Applicant"), by his Attorneys Heller, Horowitz & Feit, P.C., as and for his Answer and Affirmative defenses to the Opposition of BEATS ELECTRONICS, LLC ("Opposer"), alleges as follows:

1. Applicant admits the truth of the allegations in Paragraph "1" of the Notice of Opposition.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "2" of the Notice of Opposition and, accordingly, denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "3" of the Notice of Opposition and, accordingly, denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "4" of the Notice of Opposition and, accordingly, denies the same.

5. Applicant denies the truth of the allegations contained in Paragraph "5" of the Notice of Opposition.

6. Applicant denies the truth of the allegations contained in Paragraph "6" of the Notice of Opposition.

7. Applicant denies the truth of the allegations contained in Paragraph "7" of the Notice of Opposition.

8. Applicant denies the truth of the allegations contained in Paragraph "8" of the Notice of Opposition.

9. Applicant denies the truth of the allegations contained in Paragraph "9" of the Notice of Opposition.

AFFIRMATIVE DEFENSES

10. There is no likelihood of confusion between Applicant's mark and Opposer's purported marks since, *inter alia*, the respective marks are not confusingly similar.

11. There is no likelihood of confusion between Applicant's mark and Opposer's purported marks since "beats" is descriptive and/or highly suggestive in relation to headphones.

12. There is no likelihood of confusion between Applicant's mark and Opposer's purported marks since, upon information and belief, by Opposer's own admission, during prosecution of Registration No. 3,532,627, "'beats' is suggestive of the beat accompanying music, and, as such, this mark is not particularly strong."

13. There is no likelihood of confusion between Applicant's mark and Opposer's purported marks since, upon information and belief, by Opposer's own admission during prosecution of Registration No. 3,532,627, consumers of headphones are sophisticated.

14. There is no likelihood of confusion between Applicant's mark and Opposer's purported marks due to consumer sophistication.

15. The trade channels in which Applicant's goods will be sold in connection with its mark are dissimilar to the trade channels Opposer's goods are sold in.

16. The conditions under which, and buyers to whom, sales are made or will be made by Applicant of its goods in connection with its mark are dissimilar to the conditions under which, and buyers to whom, sales are made by Opposer.

17. The term "Beat" in combination with other terms, has been registered by numerous third-parties with regard to apparatus for recording, transmission or reproduction of sound or images.

18. The relief sought by Opposer is barred by the doctrines of waiver and estoppel.

19. Registrations upon which this Opposition is based are the subject of a counterclaim for cancellation in the matter of *Beats Electronics, LLC v. Merkury Innovations, LLC* currently pending in the United States Patent and Trademark Office under Opposition No. 91203192. In the event such counterclaim is granted, the subject Notice of Opposition would be rendered moot.

20. Applicant has insufficient information upon which to form a belief as to whether he may have additional unstated Affirmative Defenses. Applicant reserves the right to assert additional Affirmative Defenses in the event discovery indicates that they are appropriate.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety and with prejudice, and the Applicant be awarded reasonable costs and attorneys' fees in defending the Notice of Opposition and for such further relief as the Trademark Trial and Appeal Board finds just and equitable.

Dated: New York, New York
March 19, 2012

Respectfully submitted,

HELLER, HOROWITZ & FEIT, P.C.

By: _____
Alan A. Heller (AH-7942)
Attorneys for Applicant
292 Madison Avenue
New York, New York 10017
Tel: (212) 685-7600
Fax: (212) 696-9459

CERTIFICATE OF TRANSMISSION

This will certify that the foregoing ANSWER AND AFFIRMATIVE DEFENSES is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at http://estta.uspto.gov/.

Dated: March 19, 2012

ALAN A. HELLER

CERTIFICATE OF SERVICE

This will certify that on the 19th day of March, 2012, a true and correct copy of the ANSWER AND AFFIRMATIVE DEFENSES was mailed, first class, postage prepaid to attorneys for Opposer as follows:

Michael G. Kelber, Esq.
Luis M. Lozada, Esq.
NEAL, GERBER & EISENBERG LLP
Attorneys for Opposer
2 N. LaSalle Street, Suite 1700
Chicago, IL 60602

Dated: March 19, 2012

ALAN A. HELLER