

ESTTA Tracking number: **ESTTA493702**

Filing date: **09/11/2012**

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

Proceeding	91203898
Party	Defendant Beautiful People Magazine, Inc.
Correspondence Address	JOSHUA DOMOND BEAUTIFUL PEOPLE MAGAZINE INC 101 OCEAN DRIVE SUITE 916 MIAMI BEACH, FL 33139 UNITED STATES bpmagonline@gmail.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Joshua Domond
Filer's e-mail	bpmagonline@gmail.com
Signature	/Joshua Domond/
Date	09/11/2012
Attachments	Copy of motion 09102012.pdf (4 pages)(2715611 bytes) Copy of first amended answer 09102012.pdf (14 pages)(8141821 bytes)

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

PeopleNetwork Aps	.	
AKA BeautifulPeople.com	.	
Opposer	.	Mark: Beautiful People Magazine
	.	
v.	.	Serial No. – 85-196,831
	.	
	.	
Beautiful People Magazine, Inc.	.	Opposition No. 91203898
Applicant	.	
	.	

MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER

In accordance with Trademark Trial and Appeal Board procedures, Applicant, by and through its President Joshua Domond, requests leave to file Applicant's First Amended Answer to this Opposition.

I. STATEMENT OF FACTS

On February 15, 2012, Opposer filed this action, Opposition 91203898 against Applicant's federal trademark application, Serial No. 85-196,381.

Applicant was not represented by an attorney when Applicant's President drafted and filed an Answer to the Notice of Opposition. Unfamiliar with the rules and procedures of adversary proceedings in the TTAB, on March 27, 2012, Applicant filed an Answer to the Notice of Opposition. The Applicant's response did not address all of legal issues raised in the Notice of Opposition. However, Applicant reserved the right to assert additional affirmative defenses and/or to supplement the Applicant's Answer upon further discovery or investigation. Additionally, Applicant mistakenly and improperly submitted counterclaims without paying the fee.

Applicant has since familiarized himself with the T.B.M.P, relevant rules of civil procedure, and/or relevant statutes. Accordingly, Applicant now realizes his mistakes and desires to correct the mistakes. Applicant has now drafted an Answer which comports with the TTAB regulations, addresses the legal issues raised in Opposer's Notice of Opposition, presents a more comprehensive set of affirmative defenses, and eliminates the counterclaims.

Applicant files this motion in hopes that the TTAB will allow the Applicant to file an Amended Answer to preserve all rights in this matter, preserve affirmative defenses, and eliminate the counterclaims.

II. **ARGUMENT**

a. The Court Should Freely Grant Leave to Amend

FRCP 15(a) states that “leave [to amend] shall be freely given when justice so requires.” Though leave to amend is firmly within the discretion of the Board, “In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 – to facilitate decision on the merits, rather than on the pleadings or technicalities.” *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991), quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

Furthermore, “this policy is to be applied with extreme liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

In this case, justice requires that the Board grant leave to amend so that Applicant is fully able to address all legal issues in the Notice of Opposition, comport with TTAB regulations, preserve affirmative defenses, and eliminate improper or unnecessary counterclaims. Justice also requires that the Board grant leave to amend so that the Board, when deciding this case, will have a more complete record on which to rule. This furthers the goal of justice and efficiency.

b. Opposer Will Not Be Unfairly Prejudiced by Granting Leave to Amend the Answer and Granting Leave to Amend Will Not Violate Settled Law

Reasons to deny leave to amend a pleading under FRCP 15(a) include “undue delay, bad faith, or dilatory motive on the part of the movant.” *Foman v. Davis*, 371, U.S. 178, 182 (1962). According to TTAB precedent and/or relevant case law, leave to amend a pleading may be denied if doing so violates settled law. Here, there has been no bad conduct, bad faith, or bad/dilatory motive by the Applicant. Additionally, no settled law will be violated by granting this Leave to File First Amended Answer.

One of the main reasons that Applicant has filed an Amended Answer was to eliminate the counterclaims to comply with the Opposer’s motion. In the Amended Answer, Applicant does eliminate all counterclaims.

Please note that Joshua Domond is the President of Beautiful People Magazine, Inc, and he has been coping with multiple deaths in his family. Applicant’s President is going through the grieving process and the process of handling business related to funerals and/or settlement of estates. Accordingly, there has been a delay in submission of this motion plus the Amended Answer. With the consent of the Opposer, the settlement conference has also been delayed for the same reason.

Please note that Opposer will not suffer unfair prejudice if the Leave to Amend the Answer is granted because the settlement conference has not taken place and discovery is in its initial stage. There is simply no prejudice here.

Finally, granting this Leave to File First Amended Answer will not violate settled law.

c. The Board Should Reset The Deadline for Discovery Conference and All Subsequent Dates.

In accordance with the Opposer's last motion, Applicant believes the parties' obligation to have a discovery conference is effectively stayed. T.B.M.P. § 401.01 *citing* Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242; 42245 (August 1, 2007). In such cases, the Board will reset the discovery deadline for the discovery conference as well as all subsequent dates, upon resolution of the motion. *Id.* Accordingly, Applicant respectfully requests that the Board reset the deadline for the discovery conference as well as all subsequent dates, upon resolution of the motion.

d. The Board Should Suspend All Proceedings Pending The Outcome of This Motion.

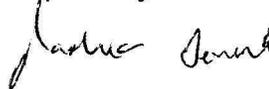
Pursuant to 37 CFR § 2.127(d), the Board should suspend "the case... with respect to all matters not germane to the motion." T.B.M.P. § 528.03. Thus, Applicant respectfully requests that the Board issue an order suspending all proceedings pending the outcome of this motion.

III. CONCLUSION

For the foregoing reasons, Applicant hereby requests that the Trademark Trial and Appeal Board grant this Motion for Leave to File First Amended Answer.

Dated: 09/10/2012

Respectfully submitted,



Joshua Domond
President
Beautiful People Magazine, Inc
Ste 916, 101 Ocean Drive
Miami Beach, FL 33139

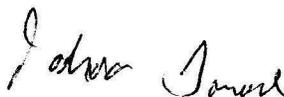
PROOF OF SERVICE BY MAIL

I, Joshua Domond, the undersigned, hereby declare as follows:

1. I am over 18 years and I am the President of the Applicant/Defendant in Opposition No. 91203898.
2. My address is 101 Ocean Drive, Suite 916, Miami Beach, FL 33139
3. On September 10, 2012 at 101 Ocean Drive, Suite 916, Miami Beach, FL 33139, I served a true copy of the attached document, entitled "**Motion For Leave To File First Amended Answer**" by placing the documents in an addressed, sealed envelope clearly labeled to identify the person being served at the address shown below and placed this in the mail for deposit in the United States Postal Service on that date in accordance with ordinary business practices:

David K. Caplan
Keats, McFarland, & Wilson, LLP
Attorneys for PeopleNetwork Aps AKA Beautiful People.com
9720 Wilshire Blvd, Penthouse Suite
Beverly Hills, CA 90212

4. An electronic copy was also emailed to Opposer's email at dcaplan@kmwlaw.com.
5. I declare that the foregoing is true and correct. Executed September 10, 2012 at Miami, Florida.



Joshua Domond
President of Beautiful People Magazine, Inc.
Beautiful People Magazine, Inc.
101 Ocean Drive, Suite 916
Miami Beach, FL 33139
305-305-5122

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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PeopleNetwork Aps	.	
AKA BeautifulPeople.com	.	
Opposer	.	Mark: Beautiful People Magazine
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	.	
Beautiful People Magazine, Inc.	.	Opposition No. 91203898
Applicant	.	
	.	

APPLICANT’S FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION

Beautiful People Magazine, Inc. (“Applicant”), a Florida corporation, by and through its president, Joshua Domond, hereby, answers the Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 1 of the Notice of Opposition and the preceding background supplied by Opposer, and on that basis denies such allegations. Additionally, Opposer failed to plead and/or provide any specific details on how it will be damaged by registration of the Applicant’s mark.
2. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 of the Notice of Opposition, and on that basis denies such allegations.
3. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 3 of the Notice of Opposition, and on that basis denies such allegations.
4. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Notice of Opposition, and on that basis denies such allegations. Additionally, Opposer does not have the exclusive right to the Beautiful People mark in the United States as illustrated by several active

registrations or applications for marks which include the words “Beautiful People” and as illustrated by the fact that those applications or registrations have owners other than the Opposer. More specifically, there are active registrations and applications containing the words Beautiful People in classes 025, 036, 041, and 045.

The registrations and/or applications are as follows:

Registration No. 3960506 for Beautiful People in Class 025 owned 37.37, Inc.

Registration 2941226 for Where Beautiful People Come to Get Ugly in class 025 owned by Sports Entertainment, Inc.

Registration No. 2957823 for Beautiful Places for the Beautiful People in Class 036 owned by Robert L. Stark Enterprises, Inc.

Application No. 85281311 for Date Beautiful People in Class 045 (on the Supplemental Register) owned by Infostream Group, Inc.

Registration 3850544 for Beautiful People in Action in Class 041 owned by Applicant.

5. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Notice of Opposition, and on that basis denies such allegations.
6. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Notice of Opposition, and on that basis denies such allegations.
7. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 7 of the Notice of Opposition, and on that basis denies such allegations.
8. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 8 of the Notice of Opposition, and on that basis denies such allegations. Additionally, Opposer does not state whether Opposer used the Opposer’s cited marks in commerce in the United States. Opposer also failed to provide specific facts to illustrate that the general public recognizes Opposer’s marks as designations of source of Opposer’s services or goods.
9. Applicant denies all allegations in Paragraph 9 of the Notice of Opposition.

More specifically, Applicant denies that Applicant’s mark is similar to Opposer’s mark as to appearance, sound, connotation, and/or commercial impression.

Applicant also denies that the marks are identical and denies that the Applicant's mark has services similar to Opposer's goods/services.

Applicant denies the Applicant's mark will cause a mistake as to source, sponsorship, affiliation, or to deceive.

Additionally, Applicant denies that Applicant's mark poses any likelihood of confusion, mistake, or deception under Section 2d of the Act, in relation to the Opposer's marks on several grounds, including but not limited to:

(a) Applicant's mark is a strong and distinctive mark, such that no conflicting registered or pending marks were found by the trademark examiner.

Conversely, Opposer's application Serial No. 85236075 for Beautiful People in classes 016 and 045 was initially refused registration on the Principal Register because the trademark examiner determined the mark to be merely descriptive of features of the Opposer's goods and services.

An excerpt from the Opposer's website states that subjects become members of its dating services when they are voted "beautiful" after uploading a photograph. Thus, the products and services feature "beautiful people." The trademark examiner concluded that both the individual components and the words combined were descriptive of Opposer's goods and services and did not create a unique, incongruous, or non-descriptive meaning in relation to the goods and services. The Opposer's application for Serial No. 85236075 was later suspended, but the rejection for being merely descriptive was "continued" by the trademark examiner.

The Opposer filed an identical application for Beautiful People in Class 041 on the Supplemental Register, the register reserved for descriptive marks. The co-pending Opposer's application for Beautiful People on the Supplemental Register is Serial No. 85/264, 026 and the prosecution of the Opposer's application has been suspended. This application would have likely faced rejection by the trademark examiner for being merely descriptive.

Likewise, Opposer's other cited application Serial No 85472690 for BeautifulPeople.com would have likely faced rejection by the trademark examiner for being merely descriptive.

(b) Applicant's mark is sufficiently different in its entirety from Opposer's mark as to appearance, sound, connotation, and/or commercial impression so as to preclude any likelihood of confusion.

(c) Goods to be sold by Applicant are sufficiently different from those sold by Opposer so as to preclude any likelihood of confusion.

Applicant's application (Serial No. 85196831) is filed in Class 009 with a goods and services description listed as "downloadable electronic publication, namely general interest magazine featuring philanthropy, fashion, health, food, world issues, travel, art, and entertainment. Opposer has no trademark applications filed and/or pending in class 009 because Opposer's goods and services are not eligible to be listed in Class 009.

In fact, Opposer's applications are filed in Classes 016, 041, and 045 and these applications have goods/services that are different from those of Applicant. The goods and services referenced in Opposer's application do not belong in Class 009 and that is a significant point that must be emphasized. A more specific listing of Opposer's cited applications is as follows:

Opposer's application – Serial No – 85236075 for Beautiful People is filed in Class 16 for "calendars" and in Class 045 for "dating services."

Opposer's application 85264026 for Beautiful People is filed in Class 041 on the supplemental register for "entertainment, namely a continuing reality television show broadcast over television, cable television, audio, video, digital media, and the internet."

Opposer's application 85472690 for BeautifulPeople.com is filed in Class 041 for "entertainment services in the nature of an ongoing reality based television program and in Class 045 for "internet based dating, social introduction, and social networking services.

(d) The consumer markets and trade channels through which Applicant shall sell Applicant's goods are sufficiently different from those of the Opposer so as to preclude any likelihood of confusion, and

(e) The conditions under which Applicant will sell Applicant's goods are sufficiently different from those under which Opposer's goods are sold so as to preclude any likelihood of confusion.

10. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 10 of the Notice of Opposition, and on that basis denies such allegations. Additionally, Applicant denies any implied or express claims by Opposer that Opposer's marks are famous.

Opposer failed to plead and provide specific facts to support any implied or express claim that the Opposer's marks are famous.

Opposer did not plead and/or provide facts to prove that the Opposer's marks are famous to customers or to potential customers in the relevant market. Opposer also failed to plead and/or provide specific facts to prove that Opposer's marks have widespread renown and recognition by general public.

Opposer also failed to plead specific facts and/or provide detailed evidence to establish fame of the Opposer's marks, such as detailed advertising figures, detailed sales figures, market share analyses, brand recognition surveys, and details regarding length of use.

Additionally, Opposer failed to plead specific facts to prove that the Opposer's marks have been adjudicated as famous by a court of competent jurisdiction in the United States.

11. Denied. Applicant denies all of the allegations set forth in Paragraph 11 of the Notice of Opposition.

More specifically, Applicant denies Opposer's allegations that Applicant's mark dilutes, will dilute, or is likely to dilute the Opposer's marks via blurring or tarnishment. Applicant denies any implied or express claims that Opposer's marks are famous. Additionally, Applicant denies that the Opposer's marks are distinctive for the goods and services listed in Opposer's applications.

Opposer's application Serial No. 85236075 for Beautiful People in classes 016 and 045 was initially refused registration on the Principal Register because the trademark examiner determined the mark to be merely descriptive of features of the Opposer's goods and services. Opposer's other applications were suspended, but likely would have faced the same rejection for being merely descriptive of features of the Opposer's goods and services.

The Opposer's marks are not famous. Opposer failed to plead and provide specific facts to support any claim that the Opposer's marks are famous. Opposer did not plead and/or provide facts to prove that the Opposer's marks are famous to customers or to potential customers in the relevant market. Opposer also failed to plead and/or provide specific facts to prove that the Opposer's marks have widespread renown and recognition by general public.

Opposer also failed to plead specific facts and/or provide detailed evidence to establish fame of the Opposer's marks, such as detailed advertising figures, detailed sales figures, market share analyses, brand recognition surveys, and details regarding length of use. Additionally, Opposer failed to plead specific facts to prove that the Opposer's marks have been adjudicated as famous by a court of competent jurisdiction in the United States.

Since the marks referenced by the Opposer in the Notice of Opposition are not famous, there is no dilution.

Opposer also failed to plead or provide specific facts to prove that Applicant's mark weakens the power of the Opposer's marks through identification with dissimilar goods.

Additionally, Opposer has not pleaded specific facts to prove other traditional factors of dilution by blurring via examination of:

- (i) the degree of similarity between the mark and the alleged famous mark,
- (ii) the degree of inherent or acquired distinctiveness,
- (iii) the extent to which the owner of the alleged famous mark is engaging in substantially exclusive use of the mark,
- (iv) degree of recognition of the alleged famous mark,
- (v) whether the user of the alleged infringing mark intended to create an association with the alleged famous mark, and
- (vi) any actual association between the mark and the alleged famous mark.

Additionally, Opposer has failed to plead specific facts to prove dilution by tarnishment. More specifically, Opposer failed to plead or provide specific facts to prove that Applicant's mark casts the Opposer's marks in an unflattering light or harms the reputation of the Opposer's marks through association with inferior products or services.

12. Denied. Although registration of Applicant's mark might give Applicant at least a prima facie exclusive right to the use of Applicant's mark, Opposer will not be damaged by registration of the Applicant's mark. None of the Opposer's trademark applications are in class 009 and Opposer's cited applications are not eligible for Class 009 as illustrated by the goods/services descriptions listed on Opposer's applications. Opposer will not be damaged by registration of Applicant's mark because there is no likelihood of confusion and no likelihood of dilution.

Moreover, Opposer has not pleaded or provided specific details and/or written evidence to support a reasonable basis for Opposer's belief that the Opposer will be damaged by registration of the Applicant's mark.

13. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 13 of the Notice of Opposition, and on that basis denies such allegations. Additionally, Opposer does not have the exclusive right to the Beautiful People mark in the United States and the public would not be misled or

deceived if the Applicant's mark were registered.

Opposer's claim of exclusive rights to the mark "beautiful people" is disproved by examining various active registrations or applications for marks which include the terms "beautiful people" and by noticing that the registrations or applications have owners other than Opposer. More specifically, there are active registrations and applications containing the words beautiful people in at classes 025, 036, 041, and 045.

The registrations and/or applications are as follows:

Registration No. 3960506 for Beautiful People in Class 025 owned 37.37, Inc.

Registration 2941226 for Where Beautiful People Come to Get Ugly in class 025 owned by Sports Entertainment, Inc.

Registration No. 2957823 for Beautiful Places for the Beautiful People in Class 036 owned by Robert L. Stark Enterprises, Inc.

Application No. 85281311 for Date Beautiful People in Class 045 (on the Supplemental Register) owned by Infostream Group, Inc.

Registration 3850544 for Beautiful People in Action in Class 041 owned by Applicant.

AFFIRMATIVE DEFENSES

Without admitting or acknowledging that Beautiful People Magazine, Inc. and/or its President, Joshua Domond, bear any burden of proof as to any of the defenses listed below, Applicant asserts the following defenses.

First Affirmative Defense (Lack of Standing)

Opposer has not demonstrated sufficient standing, in that Opposer has not pleaded or provided specific details and/or written evidence to support a reasonable basis for a belief that the Opposer will be damaged by registration of the Applicant's mark. In fact, Opposer will not suffer damage because there is no likelihood of confusion and there is no likelihood of dilution.

**Second Affirmative Defense
(No likelihood of Confusion)**

There is no likelihood of confusion and the marks are not confusingly similar. Applicant makes the following assertions:

(a) Applicant's mark is a strong and distinctive mark, such that no conflicting registered or pending marks were found by the trademark examiner.

Conversely, Opposer's application Serial No. 85236075 for Beautiful People in classes 016 and 045 was initially refused registration on the Principal Register because the trademark examiner determined the mark to be merely descriptive of features of the Opposer's goods and services.

An excerpt from the Opposer's website states that subjects become members of its dating services when they are voted "beautiful" after uploading a photograph. Thus, the products and services feature "beautiful people." The trademark examiner concluded that both the individual components and the words combined were descriptive of Opposer's goods and services and did not create a unique, incongruous, or non-descriptive meaning in relation to the goods and services. The Opposer's application for Serial No. 85236075 was later suspended, but the rejection for being merely descriptive was "continued" by the trademark examiner.

The Opposer filed an identical application for Beautiful People in Class 041 on the Supplemental Register, the register reserved for descriptive marks. The co-pending Opposer's application for Beautiful People on the Supplemental Register is Serial No. 85/264, 026 and the prosecution of the Opposer's application has been suspended. This application would have likely faced rejection by the trademark examiner for being "merely descriptive."

Likewise, the Opposer's other cited application Serial No 85472690 for BeautifulPeople.com would have likely faced rejection by the trademark examiner for being merely descriptive.

(b) Applicant's mark is sufficiently different in its entirety from Opposer's mark as to appearance, sound, connotation, and/or commercial impression so as to preclude any likelihood of confusion.

(c) Goods to be sold by Applicant are sufficiently different from those sold by Opposer so as to preclude any likelihood of confusion.

Applicant's application (Serial No. 85196831) is filed in Class 009 with a goods and services description listed as "downloadable electronic publication, namely general interest magazine featuring philanthropy, fashion, health, food, world issues, travel, art, and entertainment.

Opposer has no trademark applications filed and/or pending in class 009 because Opposer's goods and services are not eligible to be listed in Class 009. In fact, Opposer's applications are filed in Classes 016, 041, and 045 and these applications have goods/services that are different from those of Applicant. The goods and services referenced in Opposer's applications do not belong in Class 009 and that is a significant point that must be emphasized. A more specific listing of Opposer's cited applications is as follows:

Opposer's application – Serial No – 85236075 for Beautiful People is filed in Class 16 for “calendars” and in Class 045 for “dating services.”

Opposer's application 85264026 for Beautiful People is filed in Class 041 on the supplemental register for “entertainment, namely a continuing reality television show broadcast over television, cable television, audio, video, digital media, and the internet.”

Opposer's application 85472690 for BeautifulPeople.com is filed in Class 041 for “entertainment services in the nature of an ongoing reality based television program and in Class 045 for “internet based dating, social introduction, and social networking services.”

(d) The consumer markets and trade channels through which Applicant shall sell Applicant's goods are sufficiently different from those of the Opposer so as to preclude any likelihood of confusion, and

(e) The conditions under which Applicant will sell Applicant's goods are sufficiently different from those under which Opposer's goods are sold so as to preclude any likelihood of confusion

**Third Affirmative Defense
(No Likelihood Dilution and No Actual Dilution)**

There is no likelihood of dilution and no actual dilution between Applicant's mark and Opposer's marks. Opposer has not proven the elements of trademark dilution.

Opposer failed to plead and/or prove that Opposer's marks are distinctive for the goods and services listed in Opposer's applications. In fact, Opposer's application Serial No. 85236075 for Beautiful People in classes 016 and 045 was initially refused registration on the Principal Register because the trademark examiner determined the mark to be merely descriptive of features of the Opposer's goods and services. Opposer's other applications were suspended, but likely would have faced the same rejection for being “merely descriptive.”

Opposer also failed to plead and provide specific facts to support any claim that the Opposer's marks are famous. Opposer did not plead and/or provide facts to prove that the Opposer's marks are famous to customers or to potential customers in the relevant market. Opposer also failed to plead and/or provide specific facts to prove that the Opposer's marks have widespread renown and recognition by general public.

Opposer also failed to plead specific facts and/or provide detailed evidence to establish fame of the Opposer's marks, such as detailed advertising figures, detailed sales figures, market share analyses, brand recognition surveys, and details regarding length of use. Additionally, Opposer failed to plead specific facts to prove that the Opposer's marks have been adjudicated as famous by a court of competent jurisdiction in the United States.

Since the Opposer's marks are not famous, there is no likelihood of dilution and no actual dilution.

Opposer also failed to plead or provide specific facts to prove that Applicant's mark weakens the power of the Opposer's marks through identification with dissimilar goods.

Additionally, Opposer has not pleaded specific facts to prove some and/or all of the traditional factors of dilution by blurring via examination of:

- (i) the degree of similarity between the mark and the alleged famous mark,
- (ii) the degree of inherent or acquired distinctiveness,
- (iii) the extent to which the owner of the alleged famous mark is engaging in substantially exclusive use of the mark,
- (iv) degree of recognition of the alleged famous mark,
- (v) whether the user of the alleged infringing mark intended to create an association with the alleged famous mark, and
- (vi) any actual association between the mark and the alleged famous mark.

Additionally, Opposer failed to plead specific facts to prove dilution by tarnishment. More specifically, Opposer failed to plead or provide specific facts to prove that Applicant's mark casts the Opposer's marks in an unflattering light or harms the reputation of the Opposer's marks through association with inferior products or services

**Fourth Affirmative Defense
(Merely Descriptive Mark)**

Opposer's application Serial No. 85236075 for Beautiful People in classes 016 and 045 was initially refused registration on the Principal Register because the trademark examiner determined the mark to be merely descriptive of features of the Opposer's goods and services. The Opposer's application for Serial No. 85236075 was later suspended, but the rejection for being merely descriptive was "continued" by the trademark examiner.

The Opposer filed an identical application for Beautiful People in Class 041 on the Supplemental Register, the register reserved for descriptive marks. The co-pending Opposer's application for Beautiful People on the Supplemental Register is Serial No. 85/264, 026 and the prosecution of the Opposer's application has been suspended. This mark would have likely been rejected by the trademark examiner for being "merely descriptive."

Likewise, the Opposer's other cited application Serial No 85472690 for BeautifulPeople.com would have likely faced rejection by the trademark examiner for being "merely descriptive."

**Fifth Affirmative Defense
(No Exclusive Right to the Beautiful People Mark)**

Opposer does not have the exclusive right to the Beautiful People mark in the United States as illustrated by several active registrations and/or applications for marks that include the term "beautiful people" with such marks having owners different than the Opposer. More specifically, there are active registrations and applications containing the words Beautiful People in classes 025, 036, 041, and 045.

The registrations and/or applications are as follows:

Registration No. 3960506 for Beautiful People in Class 025 owned by 37.37, Inc.

Registration 2941226 for Where Beautiful People Come to Get Ugly in class 025 owned by Sports Entertainment, Inc.

Registration No. 2957823 for Beautiful Places for the Beautiful People in Class 036 owned by Robert L. Stark Enterprises, Inc.

Application No. 85281311 for Date Beautiful People in Class 045 (on the Supplemental Register) owned by Infostream Group, Inc.

Registration 3850544 for Beautiful People in Action in Class 041 owned by Applicant.

**Sixth Affirmative Defense
(Prior Registration of Similar Mark)**

Applicant has registered a similar mark for Beautiful People in Action (Registration No. 3850544) for “Entertainment services, namely, conducting contests designed to promote socially beneficial goals” in Class 041.

Opposer did not file an opposition to that mark and has not filed a cancellation petition. Thus, the Opposer should be prevented from seeking opposition of the Applicant’s current mark. If the Opposer did not object to the similar registered mark, then the Opposer should not prevail in an Opposition proceeding concerning Applicant’s current mark (Serial No. 85-196,831 for Beautiful People Magazine).

**Seventh Affirmative Defense
(Laches)**

Opposer’s opposition is barred by the doctrine of Laches by virtue of Opposer’s failure to object to Applicant’s prior registration of Beautiful People in Action (Registration No. 3,850,544). Furthermore, Opposer failed to take any action for over a year when the applicant filed the current application for the mark Beautiful People Magazine.

**Eighth Affirmative Defense
(Acquiescence)**

Opposer’s opposition is barred by the doctrine of acquiescence by virtue of Opposer’s failure to object to Applicant’s prior registration of Beautiful People in Action (Registration No. 3,850,544). Furthermore, Opposer failed to take any action for over a year when the Applicant filed the current application for the mark Beautiful People Magazine.

**Ninth Affirmative Defense
(Estoppel)**

Opposer’s opposition is barred by the doctrine of estoppel by virtue of Opposer’s failure to object to Applicant’s prior registration of Beautiful People in Action (Registration No. 3,850,544). Furthermore, Opposer failed to take any action for over a year when the Applicant filed the current application for the mark Beautiful People Magazine.

**Tenth Affirmative Defense
(Lack of Rejection of Applicant’s Mark by Trademark Examiner)**

The United States Patent and Trademark Office (USPTO) did not cite any registration or pending application against Applicant’s application for “Beautiful People

Magazine.” The trademark examiner found no conflicting pending trademark applications and found no conflicting trademark registrations. The trademark examiner would have refused registration, or at a minimum, issued at least an initial rejection, based on any existing registrations or pending applications, if there was any reason to believe that consumers would be confused as to the source of the respective goods/services offered by the Applicant.

**Eleventh Affirmative Defense
(Unclean Hands)**

Opposer’s claims are barred by the doctrine of unclean hands. Applicant is and/or will be a small business owner. Small businesses are having trouble staying afloat in today’s turbulent economic times. Opposer is attempting to devastate a small business by opposing Applicant’s mark without doing research to determine if the marks truly will be competitive in the same market. In this case, Opposer has no legitimate justification for opposing Applicant’s mark.

**Twelfth Affirmative Defense
(Reservation)**

Applicant reserves the right to assert any and all other affirmative defenses which it becomes aware of throughout discovery, testimony, and/or otherwise during the pendency of this matter. Such other affirmative defenses include, but are not limited to, collateral estoppel, res judicata, abandonment, fraud, mistake, prior registration, and other defenses which Applicant may become aware of throughout the pendency of this matter.

ELIMINATION OF COUNTER CLAIMS

Applicant officially eliminates and drops all counterclaims that were set forth in the previous answer.

WHEREFORE, having fully answered, Applicant Beautiful People Magazine, Inc., by and through its president Joshua Domond, prays for judgment against the Opposer, and requests that the Trademark Trial and Appeal Board dismiss this Notice of Opposition with prejudice and enter judgment for the Applicant.

Dated: 09/10/2012

Respectfully submitted,

Joshua Domond
President
Beautiful People Magazine, Inc
Ste 916, 101 Ocean Drive
Miami Beach, FL 33139

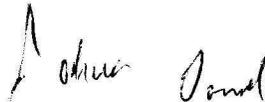
PROOF OF SERVICE BY MAIL

I, Joshua Domond, the undersigned, hereby declare as follows:

1. I am over 18 years and I am the President of the Applicant/Defendant in Opposition No. 91203898.
2. My address is 101 Ocean Drive, Suite 916, Miami Beach, FL 33139
3. On September 10, 2012 at 101 Ocean Drive, Suite 916, Miami Beach, FL 33139, I served a true copy of the attached document, entitled **“Applicant’s First Amended Answer To Notice Of Opposition”** by placing the documents in an addressed, sealed envelope clearly labeled to identify the person being served at the address shown below and placed this in the mail for deposit in the United States Postal Service on that date in accordance with ordinary business practices:

David K. Caplan
Keats, McFarland, & Wilson, LLP
Attorneys for PeopleNetwork Aps AKA Beautiful People.com
9720 Wilshire Blvd, Penthouse Suite
Beverly Hills, CA 90212

4. An electronic copy was also emailed to Opposer’s email at dcaplan@kmwlaw.com.
5. I declare that the foregoing is true and correct. Executed September 10, 2012 at Miami, Florida.



Joshua Domond
President of Beautiful People Magazine, Inc.
Beautiful People Magazine, Inc.
101 Ocean Drive, Suite 916
Miami Beach, FL 33139
305-305-5122