Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA489831**

Filing date: **08/20/2012**

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

Proceeding	91206014
Party	Defendant BJ Acquisition LLC
Correspondence Address	ALI R. LATIFI TUCKER & LATIFI, LLP 160 E 84TH ST APT 5E NEW YORK, NY 10028-0056 UNITED STATES arlatifi@tuckerlatifi.com
Submission	Answer
Filer's Name	Ali R. Latifi
Filer's e-mail	arlatifi@tuckerlatifi.com
Signature	/Ali R. Latifi/
Date	08/20/2012
Attachments	Too Too Pretty Answer.pdf (5 pages)(85502 bytes)

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

TOO FACED COSMETICS LLC, Opposer, v. BJ ACQUISITION LLC Applicant.	Opp. No.: Serial No.: Mark: Filed: Published:	91206014 85/488,195 BETSEY JOHNSON TOO TOO PRETTY (Stylized) December 06, 2011 May 22,2012

Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION

Applicant, BJ Acquisition LLC ("Applicant"), through its attorneys Tucker & Latifi, LLP, hereby answers the *Notice of Opposition* as follows:

General Allegations

1. Applicant is without information or knowledge sufficient to form a belief as to the truthfulness of the allegations stating that Opposer is a prestigious cosmetics company sold extensively in the United States and Internationally.

2. Applicant is without information or knowledge sufficient to form a belief as to the truthfulness of paragraph #2., thus denying same.

3. Applicant is without information or knowledge sufficient to form a belief as to the truthfulness of paragraph #3., thus denying same.

4. Applicant is without information or knowledge sufficient to form a belief as to the truthfulness of paragraph #4, thus denying same.

5. Applicant is without information or knowledge sufficient to form a belief as to the truthfulness of paragraph #5, thus denying same.

6. Applicant denies that Opposer has prior rights in and to the TOO marks as set forth in paragraph #6. Applicant admits that it applied for registration of BETSEY JOHNSON TOO TOO PRETTY in International Class 3.

7. Applicant denies all the allegations set forth in paragraph #7.

8. Applicant denies all the allegations set forth in paragraph #8.

9. Applicant denies all the allegations set forth in paragraph #9.

10. Applicant denies all the allegations set forth in paragraph #10.

11. Applicant denies all the allegations set forth in paragraph #11

AFFIRMATIVE DEFENSES

In view of the allegations set forth in the Notice of Opposition, as well as the responses and allegations of Applicant noted above, Applicant sets forth the following affirmative defenses:

1. Opposer fails to state a claim for which relief may be granted.

2. Applicant alleges that Opposer's claims are barred by laches.

3. Applicant alleges that Opposer's claims are barred by the doctrine of estoppel.

4. Opposer's TOO FACED family of registrations and applications in International Class 3 are in no way confusingly similar to Applicant's BETSEY JOHNSON TOO TOO PRETTY (Stylized) mark in International Class 3 as is evident by the Trademark Office's approval of Applicant's mark for publication. Moreover, Applicant alleges that the two marks are very distinct and different from one another. Applicant's BETSEY JOHNSON TOO TOO PRETTY (Stylized) mark consists of the name of world-renown designer Betsey Johnson whose consent is of record in the U.S. Patent & Trademark Office. Moreover, all of Opposer's applications and registrations listed in the Notice of Opposition always contain FACED with TOO and the word TOO is never used by itself. Lastly, there are many other applications and registrations filed in the U.S. PTO in International Class 3 that contain the word "TOO".

5. The Examining Attorney assigned to Applicant's application to register its BETSEY JOHNSON TOO TOO PRETTY (Stylized) mark previously determined that there is no likelihood of confusion between Applicant's mark and Opposer's TOO FACED marks.

6. Applicant is informed and believes, and based thereon alleges that Opposer has not registered any of its TOO FACED marks or any other similar marks for "perfumes, colognes, eau de toilettes" in International Class 3.

7. Applicant alleges that, on information and belief, Opposer is not likely to be damaged by Applicant's BETSEY JOHNSON TOO TOO PRETTY (Stylized) mark, and therefore, lacks standing to oppose registration of the same.

8. Applicant reserves its right to raise additional affirmative defenses up to the time including after trial.

WHEREFORE, it is respectfully requested that this Opposition be denied in its entirety with prejudice and that the registration sought by Application Serial No. 85/488,195 be granted.

Respectfully submitted,

Dated: August 20, 2012

Ali R. Latifi, Esq.
TUCKER & LATIFI, LLP
Attorneys for Applicant
160 East 84th Street
New York, NY 10028
Tel: (212) 472-6262
arlatifi@tuckerlatifi.com

Certificate of Service

The undersigned hereby certifies that the foregoing Applicant's Answer to the Notice of Opposition was served upon the following by mailing a true copy thereof to the address as indicated below, in the United States Mail, first class postage prepaid envelope:

Wendy M. Mantell, Esq.
Greenberg Traurig, LLP
1840 Century Park East, Suite 1900
Los Angeles, California 90067-2121

This 20th day of August, 2012.

Ali R. Latifi