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

Proceeding	91210547
Party	Defendant Post Bay USA, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark  
Mark: "POST BAY" with design  
Serial No. 85/468001  
Filed on November 9, 2011  
Published on October 23, 2012

_____	)	
eBay, INC.,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91210547
	)	
POST BAY USA, Inc.	)	
	)	
Applicant	)	
_____	)	

**APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSITION**

Applicant, POST BAY USA, Inc., upon present knowledge and belief, hereby files its Answer and Affirmative Defenses to the Opposition filed by Opposer, eBAY, INC., and states as follows.

The unnumbered prefatory statements set forth in the Notice of Opposition are not believed to require a response. To the extent that they may be construed to require a response the same are denied.

**ANSWER**

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies same.
6. Applicant denies the allegations of paragraph 6.
7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies same.
8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies same.
9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies same.
10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies same.
11. Applicant denies the allegations of paragraph 11.
12. Applicant denies the allegations of paragraph 12.
13. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the balance and remainder of the allegations of paragraph 13, and therefore denies the same.
14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies same.

15. Applicant would state that the public record speaks for itself, the recited matter is not binding upon the parties hereto with respect to the adjudication of the current issues presented in this case, and denies the remainder of the allegations of paragraph 15.

16. Applicant would state that the public record speaks for itself, the recited matter is not binding upon the parties hereto with respect to the adjudication of the current issues presented in this case, and denies the remainder of the allegations of paragraph 16.

17. Applicant would state that the public record speaks for itself, the recited matter is not binding upon the parties hereto with respect to the adjudication of the current issues presented in this case, and denies the remainder of the allegations of paragraph 17.

18. Applicant would state that the public record speaks for itself, the recited matter is not binding upon the parties hereto with respect to the adjudication of the current issues presented in this case, and denies the remainder of the allegations of paragraph 18.

19. Applicant denies the allegations of paragraph 19.

20. Applicant would state that the referenced trademark application speaks for itself.

21. Applicant denies the allegations of paragraph 21.

22. Applicant denies the allegations of paragraph 22.

23. Applicant denies the allegations of paragraph 23.

24. Applicant admits the allegations of paragraph 24.

25. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25, and therefore denies same.

26. Applicant incorporates the above answers.
27. Applicant denies the allegations of paragraph 27.
28. Applicant denies the allegations of paragraph 28.
29. Applicant denies the allegations of paragraph 29.
30. Applicant incorporates the above answers.
31. Applicant admits the allegations of paragraph 31.
32. Applicant denies the allegations of paragraph 32.
33. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies same.
34. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies same.
35. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies same.
36. Applicant denies the allegations of paragraph 36.
37. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies same.
38. Applicant denies the allegations of paragraph 38.
39. Applicant denies the allegations of paragraph 39.

40. Applicant further denies each, every, and all of the remaining allegations asserted by Opposer in all counts and/or paragraphs of the Notice of Opposition which are not expressly admitted to be true herein.

### **ADDITIONAL DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. Applicant's mark is not confusingly similar to Opposer's mark, nor does use and/or registration of Applicant's mark create a likelihood of confusion in the marketplace. The term BAY is weak due to concurrent usage and registration by third parties, and all other portions including the designs of the parties' respective marks are completely distinct in sight, sound and meaning. The overall commercial impressions of the parties' marks, therefore, completely different.
3. There is no likelihood of confusion between the marks cited in the Notice of Opposition and Applicant's POST BAY (with design) mark because the parties are not competitors and their services are not related.
4. Opposer will not be harmed by Applicant's registration and therefore lacks standing to oppose the subject Application.
5. Opposer's claims are barred by the doctrines of unclean hands and trademark misuse.
6. Applicant specifically reserves the right to amend its Answer to assert such additional Affirmative Defenses or counterclaim as may be found to be applicable through or following discovery in this Opposition.

ACCORDINGLY, Applicant respectfully requests that the Board enter judgment in Applicant's favor, dismiss the Notice of Opposition with prejudice, and grant all other relief to which Applicant is entitled.

Dated: June 19, 2013

Respectfully submitted,  
/s/ JONG H PARK  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of "APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSITION " was sent by US First Class mail, postage prepaid, on 6/9/2013 to

Bobby Ghajar  
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/JONG H PARK/

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