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

Proceeding	91212069
Party	Defendant Haze Tobacco, LLC
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Submission	Answer
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Date	09/23/2013
Attachments	haze - answer to candy wrappers opposition.pdf(42384 bytes )

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

In the Matter of Trademark Application Serial No. 85/832429  
Published in the *Official Gazette* June 18, 2013

THE CANDY WRAPPERS, LLC

Opposition No. 91202169

Opposer,

v.

HAZE TOBACCO, LLC,

Applicant.

**APPLICANT'S ANSWER**

**TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

Applicant, Haze Tobacco, LLC (“HT”), for its answer to the Notice of Opposition filed by The Candy Wrappers, LLC (“Candy Wrappers”) against application for registration of HT’s trademark CANDYLICIOUS, Serial No. 85/832,429 filed January 25, 2013, and published in the Official Gazette of June 18, 2013 (the “Mark”), pleads and avers as follows:

1. Applicant admits the allegations contained in paragraph 1.
2. Applicant lacks knowledge and information sufficient to admit or deny the allegations of paragraph 2, and on that basis denies those allegations.
3. Applicant lacks knowledge and information sufficient to admit or deny the allegations of paragraph 3, and on that basis denies those allegations.
4. Applicant lacks knowledge and information sufficient to admit or deny the allegations of

paragraph 4, and on that basis denies those allegations.

5. Applicant lacks knowledge and information sufficient to admit or deny the allegations of paragraph 5, and on that basis denies those allegations.

6. Applicant denies the allegations of paragraph 6.

7. Applicant denies the allegations of paragraph 7.

8. Applicant denies the allegations of paragraph 8.

9. Applicant denies the allegations of paragraph 9.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Opposer fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the goods and/or services offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.

#### **Third Affirmative Defense**

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark of Opposer are not confusingly similar.

#### **Fourth Affirmative Defense**

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark of Opposer are not used in connection with the same or similar class of goods.

#### **Fifth Affirmative Defense**

Opposer's rights in and to the portion of its alleged trademark(s) are generic or, in the alternative, merely descriptive of the goods or services offered under the mark. Opposer's alleged mark(s) are therefore inherently unprotectable.

#### **Sixth Affirmative Defense**

Applicant has been using the Mark and developing consumer recognition and goodwill therein, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, on which inaction Applicant has relied to its detriment. Opposer's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

#### **Seventh Affirmative Defense**

Opposer has unclean hands, by virtue of the measures taken by Opposer.

WHEREFORE, Applicant requests that the instant opposition be dismissed and a registration for the Mark be issued to Applicant.

Respectfully submitted,

HAZE TOBACCO, LLC

Dated: September 23, 2013

By: /Kevin Shenkman/\_\_\_\_\_

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