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

Proceeding	91214247
Party	Defendant Madeline Chocolate Novelties, Inc.
Correspondence Address	RICHARD S. MANDARO AMSTER ROTHSTEIN & EBENSTEIN LLP 90 PARK AVE NEW YORK, NY 10016-1301 ptodocket@arelaw.com
Submission	Answer
Filer's Name	Richard S. Mandaro
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Signature	/Richard S. Mandaro/
Date	02/10/2014
Attachments	51400-91_Answer_and_Affirmative_Defenses_021014.pdf(173076 bytes)

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

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THE WARRELL CLASSIC COMPANY, LLC,	:	
	:	
Opposer,	:	Opposition No. 91214247
	:	
vs.	:	
	:	
MADELINE CHOCOLATE NOVELTIES, INC.,	:	
	:	
Applicant.	:	

----- X

ANSWER AND AFFIRMATIVE DEFENSES

Applicant/Respondent Madelaine Chocolate Novelty, Inc. (“Madelaine”), through its attorneys Amster Rothstein & Ebenstein LLP, answers the Notice of Opposition filed by Opposer, The Warrell Classic Company, LLC (“Warrell”), as follows:

1. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition, and, accordingly, denies the same.
2. Madelaine admits the truth of the allegations contained in paragraph 2 of the Notice of Opposition.
3. Madelaine admits the truth of the allegations contained in paragraph 3 of the Notice of Opposition.
4. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition, and, accordingly, denies the same.

5. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition, and, accordingly, denies the same.

6. Madelaine denies the truth of the allegations contained in paragraph 6 of the Notice of Opposition.

7. Madelaine admits the truth of the allegations contained in paragraph 7 of the Notice of Opposition.

8. Madelaine admits the truth of the allegations contained in paragraph 8 of the Notice of Opposition.

9. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 9 of the Notice of Opposition, and, accordingly, denies the same.

10. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 10 of the Notice of Opposition, and, accordingly, denies the same.

11. Madelaine denies the truth of the allegations contained in paragraph 11 of the Notice of Opposition.

12. Madelaine denies the truth of the allegations contained in paragraph 12 of the Notice of Opposition.

13. Madelaine lacks knowledge or information sufficient to form a believe as to the truth of the allegations contained in paragraph 13 of the Notice of Opposition, and, accordingly, denies the same.

14. Madelaine denies the truth of the allegations contained in paragraph 14 of the Notice of Opposition.

15. Madelaine denies the truth of the allegations contained in paragraph 15 of the Notice of Opposition.

16. Madelaine denies the truth of the allegations contained in paragraph 16 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

17. Warrell has failed to plead or establish that it owns the DUETS mark as that term is used in trademark law.

18. Warrell has failed to state a claim upon which relief may be granted.

19. There is no likelihood of confusion with Warrell's purported common law DUETS mark since Madelaine's mark is sufficiently different, in its entirety, to avoid confusion.

20. There is no likelihood of confusion between THE MADELAINE CHOCOLATE COMPANY DUETS mark and Warrell's purported common law DUETS mark since Warrell's purported mark is only entitled to a very narrow scope of protection due to third-party marks.

21. Warrell's claims are barred by the doctrine of unclean hands.

22. Upon information and belief, Warrell's claims are barred under the doctrine of equitable estoppel.

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

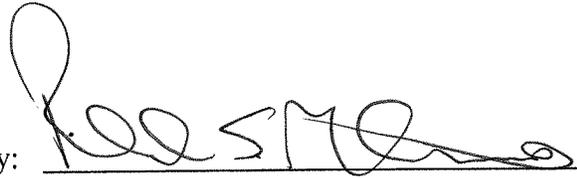
WHEREFORE, Madelaine requests that this Opposition be denied in all respects.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicant/Respondent
Madelaine Chocolate Novelties, Inc.
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New York, New York 10016
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Dated: February 10, 2014

By:

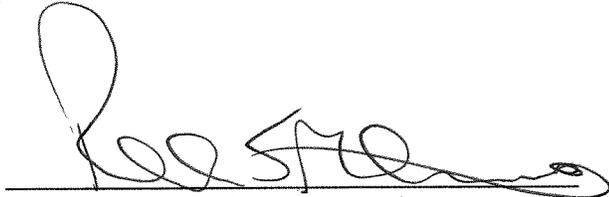
A handwritten signature in black ink, appearing to read "Lo Cicero" followed by a flourish, and "Mandaro" below it. The signature is written over a horizontal line.

Anthony F. Lo Cicero
Richard S. Mandaro

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for Madelaine Chocolate Novelties, Inc. in the above captioned opposition proceeding and that on the date which appears below, he caused a copy of the foregoing Answer And Affirmative Defenses to be served on the attorneys for Opposer, The Warrell Classic Company, LLC, by electronic mail to the below counsel's email addresses, as follows:

Michael Doctrow, Esq.
Rebecca A. Finkenbinder, Esq.
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A handwritten signature in black ink, appearing to read 'Richard S. Mandaro', written over a horizontal line.

Richard S. Mandaro