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

Proceeding	91216589
Party	Defendant Eva Rong Su
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Date	08/21/2014
Attachments	BELLARIO Answer (91216589).pdf(285437 bytes)

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

COLOR IMAGE APPAREL, INC. Opposer, v. EVA RONG SU Applicant.	Opposition No. 91216589 Mark(s): BELLARIO Serial No. 86142645 Publication Date: April 29, 2014
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**APPLICANT'S AMEDNED ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF
OPPOSITION**

Applicant, Eva Rong Su ("Applicant"), an individual residing at 214 WEST 39TH STREET SUITE 200 NEW YORK, NY 10018, through its undersigned attorney, submits its Amended Answer to the Notice of Opposition ("Notice of Opposition") filed by Color Image Apparel, Inc. ("Opposer") dated May 28, 2014 as follows:

In response to the grounds for opposition enumerated in Opposer's Electronic System for Trademark Trial and Appeals ("ESTTA") Notice of Opposition form, Applicant denies that there are any grounds to sustain the opposition and denies that Opposer owns any mark(s) sufficient to constitute a basis for this opposition.

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1, and therefore denies the allegation in Paragraph 1 of the Notice of Opposition.

2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2, and therefore denies such allegations.

3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 3, and therefore denies such allegations

4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 4, and therefore denies such allegations.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 5, and therefore denies such allegations.

6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6, and therefore denies such allegations.

7. In response to Paragraph 7, Applicant admits that the records of the Trademark Status and Document Retrieval (“TSDR”) of the United States Patent and Trademark Office (“USPTO”) speak for themselves as to the ownership and details of marks provided by Opposer. Except as expressly admitted, Applicant denies any remaining allegations set forth in paragraph 7 of the Notice of Opposition.

8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8, and therefore denies such allegations.

Applicant’s Trademark Application

9. Applicant admits that on December 13, 2013, Eva Su Rong filed an application to register the mark BELLARIO (“Applicant’s Mark) under section 1(b) on an “intent-to-use” basis.

10. Applicant admits that the Applicant’s Mark covers “Clothing, namely, tops, bottoms, sweaters, blouses, skirts, dresses, pants, scarves, vests, socks, underwear, lingerie, coats, jackets, belts” as published by the USPTO on April 29, 2014.

Likelihood of Confusion

Section 2(d) - of The Lanham Act; 15 U.S.C. §1052(d)

11. In response to paragraph 11, Applicant refers to responses to the allegations in paragraphs 1 through 10 and incorporates by reference such responses as if set forth in full herein. To the extent that further response is required, Applicant denies the allegations set forth in paragraph 11.

12. Admitted.

13. Applicant denies the allegations set forth in Paragraph 13.

14. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 14, and therefore denies such allegations.

15. Applicant denies the allegations set forth in Paragraph 15.

16. Applicant denies the allegations set forth in Paragraph 16.

17. Admitted.

Affirmative Defenses

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE FAILURE TO STATE A CLAIM

18. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE NO INJURY OR DAMAGE

19. Opposer's claims are barred in whole, or in part, because the Opposer has not and will no summer any injury or damage from the registration of Applicant's Mark.

THIRD AFFIRMATIVE DEFENSE
LACK OF STANDING

20. Opposer's claims are barred, in whole, or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

FOURTH AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

21. Opposer does not own common law rights or any registered marks that would be confused with applicant's mark in terms of sight, sound, meaning, and commercial impression.

22. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark, and has a distinct commercial impression from Opposer's claimed mark.

23. Applicant's registration of Applicant's mark does not create a likelihood of confusion among the relevant purchasing public that Applicant's services are offered, are sponsored by, or otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's mark create the likelihood that consumers will falsely believe that Applicant and Opposer are affiliated in any way.

FIFTH AFFIRMATIVE DEFENSE
DIFFERING COMMERCIAL IMPRESSION

24. Applicant and Opposer's marks have very different commercial impressions. As such, there is no likelihood of confusion among the relevant purchasing public between Applicant's and Opposer's respective marks.

SIXTH AFFIRMATIVE DEFENSE
LACK OF SECONDARY MEANING

25. The Opposer's claims are barred, in whole or in part, by the lack of sufficient secondary meaning in the Opposer's marks in question in this matter.

SEVENTH AFFIRMATIVE DEFENSE

26. Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

Dated: August 21, 2014

Respectfully Submitted,

Raj Abhyanker, P.C.

/s/ Mitesh Patel

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Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF OPPOSITION is being served by mailing a copy thereof, first class USPS addressed to the following individuals, identified in the Notice of Opposition as the attorneys of record and correspondents on this 21st day of August, 2014:

LINDSAY J HULLEY
RUTAN & TUCKER LLP
611 ANTON BOULEVARD, 14TH FLOOR
COSTA MESA, CA 92626
UNITED STATES

/s/ Mitesh Patel
Mitesh Patel