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

Proceeding	91219075
Party	Defendant GQ Associates
Correspondence Address	KUSCHA HATAMI RAJ ABHYANKER P.C. DBA LEGALFORCE 1580 W EL CAMINO REAL STE 13 MOUNTAIN VIEW, CA 94040-2463 trademarks@rajpatent.com;kuscha@legalfo
Submission	Answer
Filer's Name	Kuscha Hatami
Filer's e-mail	kuscha@legalforcelaw.com, arun@legalforcelaw.com
Signature	/Kuscha Hatami/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

<p>Interactive Life Forms, LLC</p> <p>&</p> <p>Shubin</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>GQ ASSOCIATES,</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No. 91219075</p> <p>Mark(s): FLESHMATES</p> <p>Serial Nos. 86/281,553</p>
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**APPLICANT’S ANSWER TO OPPOSER’S
NOTICE OF OPPOSITION**

Applicant GQ Associates (hereinafter “Applicant”) through his undersigned attorneys, submits his Answer and Affirmative Defenses to the Notice of Opposition (“Opposition”) filed by Interactive Life Forms LLC and Steve Shubin (hereinafter collectively and individually “Opposer”) dated August 28, 2014 as follows:

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

In response to the unnumbered introductory paragraph, Applicant denies that Opposer will be damaged by the registration of Application Serial No. 86/281,553.

Applicant lacks sufficient knowledge or information to form a belief as to the truth of the

remaining allegations in the unnumbered introductory paragraph and, therefore, denies each and every remaining allegation in the unnumbered introductory paragraph of the Notice of Opposition.

1. In response to paragraph 1, Applicant admits that the records of the Trademark Status and Document Retrieval (“TSDR”) of the United States Patent and Trademark Office (“USPTO”) reflect that Applicant filed Application Serial No. 86/281,553 to register the trademark FLESHMATES on May 14, 2014. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 1 of the notice of Opposition.

2. In response to paragraph 2, Applicant admits that the records of the TSDR of the USPTO reflect that Applicant seeks to register the trademark FLESHMATES, Application Serial No. 86/281,553 in connection with: “Accessories for personal massage, namely, massage oils”, in International Class 003; “Adult sexual stimulation aids, namely, vibrators, dildos, artificial penises, artificial vaginas, benwa balls, love dolls, penis enlargers, masturbation sleeves that allow for the collection of human sperm, masturbation devices in the nature of artificial penises and artificial vaginas, rings for stimulating the penis, anal beads, anal plugs, nipple clamps, reproductions of part of the male and female anatomy, electric and non-electric massage apparatus and accessories for personal massage and stimulation, namely, massage mitts and electric vibrating massager; kits consisting primarily of adult sexual stimulation aids; Condoms”, in International Class 010; and “Online retail and retail store services, featuring adult entertainment and adult novelties, prerecorded video tapes, DVDs, books, adult

toys and novelties, underwear, lingerie, erotic clothing and costumes, adult sexual inspired gifts, body care preparations, beauty care preparations, body lotions, massage oils, shaving products, personal lubricants, anesthetics for non-surgical use, adult sexual aids, adult games, cleaning products, condoms; Catalog ordering services featuring adult entertainment and adult novelties, prerecorded video tapes, DVDs, books, adult toys and novelties, underwear lingerie, erotic clothing and costumes, adult sexual inspired gifts, body care preparations, beauty care preparations, body lotions, massage oils, shaving products, personal lubricants, anesthetics for non-surgical use, adult sexual aids, adult games, cleaning products, condoms”, in International Class 035; all on an intent to use basis. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 2 of the notice of Opposition.

3. In response to paragraph 3, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner and assignee of U.S. Registration No. 2225503 (“503”), for the FLESHLIGHT Mark, registered on the principal register on February 23, 1999 in connection with connection with “adult novelty device for discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 3 of the Notice of Opposition.

4. In response to paragraph 4, Applicant admits that the records of the TSDR of the USPTO reflect that the ‘503 registration alleges a first use date in interstate commerce on June 17, 1997, in connection with “adult novelty device for discreet collection of human sperm”, in International Class 010. Except as expressly

admitted, Applicant denies each and every remaining allegation in paragraph 4 of the notice of Opposition.

5. In response to paragraph 5, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner of U.S. Registration No. 3479109 (“109”), for the FLESHLIGHT (stylized) Mark, registered on the principal register on August 5, 2008 in connection with “adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 4 of the Notice of Opposition.

6. In response to paragraph 6, Applicant admits that the records of the TSDR of the USPTO reflect that the ‘109 registration alleges a first use date in interstate commerce on November 1, 1998, in connection with “Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 6 of the notice of Opposition.

7. In response to paragraph 7, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner of U.S. Registration No. 3479433 (“433”), for the FLESHLIGHT GIRLS Mark, registered on the principal register on August 5, 2008 in connection with “adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human

sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 7 of the Notice of Opposition.

8. In response to paragraph 8, Applicant admits that the records of the TSDR of the USPTO reflect that the ‘433 registration alleges a first use date in interstate commerce on May 21, 2007, in connection with “Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 8 of the notice of Opposition.

9. In response to paragraph 9, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner of U.S. Registration No. 3497865 (“‘865”), for the FLESHJACK Mark, registered on the principal register on September 9, 2008 in connection with “adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 9 of the Notice of Opposition.

10. In response to paragraph 10, Applicant admits that the records of the TSDR of the USPTO reflect that the ‘865 registration alleges a first use date in interstate commerce on April 26, 2007 in connection with “Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 10 of the notice of Opposition.

11. In response to paragraph 11, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner of U.S. Registration No. 3497866 (“866”), for the FLESHJACK (stylized) Mark, registered on the principal register on September 9, 2008 in connection with “adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 11 of the Notice of Opposition.
12. In response to paragraph 12, Applicant admits that the records of the TSDR of the USPTO reflect that the ‘866 registration alleges a first use date in interstate commerce on April 26, 2007 in connection with “Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm”, in International Class 010. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 12 of the notice of Opposition.
13. In response to paragraph 13, Applicant admits that the records of the TSDR of the USPTO reflect that Steve Shubin is the sole owner of U.S. Registration No. 3955795 (“795”), for the FLESHWASH Mark, registered on the principal register on May 3, 2011 in connection with “liquid soap; adult toy cleaner”, in International Class 003; and U.S. Registration No. 3826173 (“173”), for the FLESHLUBE Mark, registered on July 27, 2010 in connection with “water-based personal lubricants”, in International Class 005. Except as expressly

admitted, Applicant denies each and every remaining allegation in paragraph 13 of the Notice of Opposition.

14. In response to paragraph 14, Applicant responds that it denies Opposer's allegations that Opposer's pleaded Marks in this Notice of Opposition are incontestable. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 14 and, therefore, denies each and every remaining allegation in paragraph 14 of the Notice of Opposition.

15. In response to paragraph 15, Applicant admits that the records of the TSDR of the USPTO reflect that the filing dates of the '503, '109, '433, '865, '866, '173, and '795 registrations predate Applicant's May 14, 2014 filing date for Applicant's FLESHMATES Mark, U.S. Serial No. 86/281,553. Except as expressly admitted, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 15 and, therefore, denies each and every remaining allegation in paragraph 15 of the Notice of Opposition.

16. In response to paragraph 16, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 and, therefore, denies each and every allegation in paragraph 16 of the Notice of Opposition.

17. In response to paragraph 17, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations in paragraph 17 and, therefore, denies each and every allegation in paragraph 17 of the Notice of Opposition.

18. In response to paragraph 18, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations that Opposer has been, prior to the filing date of the opposed application, extensively advertised and promoted their goods under any of Opposer's pleaded '503, '109, '433, '865, '866, '173, and '795 registrations. Applicant further responds that Applicant denies each and every remaining allegation in paragraph 18 of the notice of Opposition.

19. In response to paragraph 19, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 and, therefore, denies each and every allegation in paragraph 19 of the Notice of Opposition.

20. In response to paragraph 20, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations that Applicant's goods would be sold in the same channels of trade and to the same class of purchasers as the goods in Opposer's pleaded '503, '109, '433, '865, '866, '173, and '795 registrations. Applicant further responds that Applicant denies each and every remaining allegation in paragraph 20 of the notice of Opposition.

21. In response to paragraph 21, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations in paragraph 21 and, therefore, denies each and every allegation in paragraph 21 of the Notice of Opposition.

22. In response to paragraph 22, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations that over the past years, Opposer has extensively used and promoted, and continued to use and promote goods under Opposer's pleaded 503, '109, '433, '865, '866, '173, and '795 registrations. Applicant further responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations that that Opposer has expended considerable effort and expense in promoting Opposer's pleaded 503, '109, '433, '865, '866, '173, and '795 registrations, and the products offered and sold, if any, in connection therewith. Applicant further responds that Applicant denies each and every remaining allegation in paragraph 22 of the notice of Opposition.

23. In responses to paragraph 23, Applicant denies each and every allegation contained in paragraph 23 of the notice of Opposition.

24. In responses to paragraph 24, Applicant denies each and every allegation contained in paragraph 24 of the notice of Opposition.

25. In responses to paragraph 25, Applicant denies each and every allegation contained in paragraph 25 of the notice of Opposition.

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

26. Applicant incorporates by reference Paragraphs 1 – 25, inclusive as if fully set forth herein.
27. 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

28. Applicant incorporates by reference Paragraphs 1 – 27, inclusive as if fully set forth herein.
29. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial Nos. 86/281,553 for the mark FLESHMATES.

THIRD AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

30. Applicant incorporates by reference Paragraphs 1 – 29, inclusive as if fully set forth herein.

31. 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.
32. Applicant's Mark differs in terms of sight, sound, and meaning from Opposer's alleged Marks and has a distinct commercial impression from Opposer's alleged Marks.
33. Applicant's registration of Applicant's Mark does not create a likelihood of confusion among consumers that Applicant's goods and services are offered, are sponsored by, or are 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.
34. In addition, none of Opposer's pleaded '503, '109, '433, '865, '866, '173, and '795 registrations were cited to Applicant in any Office Action, by the USPTO and/or Applicant's Examining Attorney with the USPTO, for a likelihood of confusion, further supporting Applicant's position that confusion as to Applicant's Mark and Opposer's registrations is not likely.

FOURTH AFFIRMATIVE DEFENSE
LACK OF ACTUAL CONFUSION

35. Applicant incorporates by reference Paragraphs 1 – 34, inclusive as if fully set forth herein.
36. Applicant filed its FLESHMATES Mark mark in connection with Applicant's pleaded goods and services in International Classes 003, 010, and 035 on May 14, 2014 and has not experienced any confusion with Opposer or its goods and/or services, if any. On information and belief, Opposer also has not experienced

any actual confusion, notwithstanding Applicant's filing of its application since May 14, 2014.

FIFTH AFFIRMATIVE DEFENSE
LACK OF STANDING

37. Applicant incorporates by reference Paragraphs 1 – 36, inclusive as if fully set forth herein.

38. 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.

SIXTH AFFIRMATIVE DEFENSE
LACHES

39. Applicant incorporates by reference Paragraphs 1 – 38, inclusive as if fully set forth herein.

40. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

41. Applicant incorporates by reference Paragraphs 1 – 40, inclusive as if fully set forth herein.

42. Opposer's claims are barred, in whole or in part, by the doctrine of Acquiescence.

EIGHTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

43. Applicant incorporates by reference Paragraphs 1 – 42, inclusive as if fully set forth herein.

44. Opposer's claims are barred, in whole or in part, because Opposer cannot establish prior exclusive rights in the United States sufficient to bar Applicant's registrations of Applicant's FLESHMATES Mark.

NINTH AFFIRMATIVE DEFENSE
LACK OF SECONDARY MEANING

45. Applicant incorporates by reference Paragraphs 1 – 44, inclusive as if fully set forth herein.

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

TENTH AFFIRMATIVE DEFENSE
Waiver

47. Applicant incorporates by reference Paragraphs 1 – 46, inclusive as if fully set forth herein.

48. The Opposer's claims are barred, in whole or in part, by the doctrine of Waiver.

ELEVENTH AFFIRMATIVE DEFENSE
ESTOPPEL

49. Applicant incorporates by reference Paragraphs 1 – 48, inclusive as if fully set forth herein.

50. Opposer's claims are barred, in whole or in part, by the doctrine of Estoppel.

TWELFTH AFFIRMATIVE DEFENSE
UNCLEAN HANDS

51. Applicant incorporates by reference Paragraphs 1 – 50, inclusive as if fully set forth herein.

52. The Opposer's claims are barred, in whole or in part, by the doctrine of unclean hands, in that Opposer filed this Notice of Opposition for the sole purpose to harass and extort Applicant.

THIRTEENTH AFFIRMATIVE DEFENSE
NO BASIS

53. Applicant incorporates by reference Paragraphs 1 – 52, inclusive as if fully set forth herein.

54. Opposer has no basis either in law or fact, to oppose registration of Applicant's marks.

FOURTEENTH AFFIRMATIVE DEFENSE
SOPHISTICATED PURCHASERS

55. Applicant incorporates by reference Paragraphs 1 – 54, inclusive as if fully set forth herein.

56. There is no likelihood of confusion among the relevant purchasing public because the relevant purchasing public consists of highly sophisticated, discriminating, and experienced consumers who are certain to be able to distinguish Applicant's and Opposer's respective trademarks, goods, and/or services. As such, there is no likelihood at all that the relevant purchasing public might be confused about the use of the term FLESHMATES by Applicant.

57. In addition, there is no likelihood of confusion among the relevant purchasing public because the relevant purchasing public consists of highly sophisticated brand loyal consumers who's brand loyalty is certain to be able to allow them to distinguish Applicant's and Opposer's respective trademarks, goods, and/or services. As such, there is no likelihood at all that the relevant

purchasing public might be confused about the use of the term FLESHMATES by Applicant.

**FIFTEENTH AFFIRMATIVE DEFENSE
DIFFERING COMMERCIAL IMPRESSIONS**

58. Applicant incorporates by reference Paragraphs 1 – 57, inclusive as if fully set forth herein.

59. Applicant’s marks and Opposer’s marks have very different commercial impressions.

**SIXTEENTH AFFIRMATIVE DEFENSE
FAILURE TO POLICE**

60. Applicant incorporates by reference Paragraphs 1 – 59, inclusive as if fully set forth herein.

61. Opposer has failed to adequately maintain, police, or enforce trademark or proprietary rights they may have in their alleged trademarks specifically, there currently are numerous individuals and/or entities that have adopted the term FLESH and/or phonetic and foreign equivalents as literal elements as part of the goods and/or services that they offer, which, on information and believe are individuals and/or entities not affiliated with, or sponsored by Opposer, nor has Opposer attempted to halt these individuals from their use of the term FLESH.

**SEVENTEENTH AFFIRMATIVE DEFENSE
STRICT PROOF**

62. Applicant incorporates by reference Paragraphs 1 – 61, inclusive as if fully set forth herein.

63. Applicant calls for strict proof of all of the allegations against Applicant.

EIGHTEENTH AFFIRMATIVE DEFENSE

TRADEMARK BULLY

64. Applicant incorporates by reference Paragraphs 1 – 64, inclusive as if fully set forth herein.
65. Opposer is engaged in the practice of “trademark bullying” which is described as a trademark owner that uses its trademark rights to harass and intimidate another business beyond what the law might reasonably be interpreted to allow.
66. Applicant is a small business that is harmed by Opposer’s litigation tactics wherein Opposer is attempting to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to the trademark owners.

NINETEENTH AFFIRMATIVE DEFENSE
OPPOSER DOES NOT OWN ANY FAMOUS MARKS

67. Applicant incorporates by reference Paragraphs 1 – 67, inclusive as if fully set forth herein.
68. Opposer’s pleaded marks are neither famous nor distinctive.

TWENTIETH AFFIRMATIVE DEFENSE

69. Applicant incorporates by reference Paragraphs 1 – 68, inclusive as if fully set forth herein.
70. Applicant reserves the right to assert any and all other affirmative defenses of which Applicant becomes aware during the pendency of this matter.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;

2. That Applicant Serial No. 86281553 be immediately allowed to proceed to registration on the Principal register;
3. That Applicant be granted further reasonable and appropriate relief.

Dated: December 8, 2014

Respectfully submitted,

/Kuscha Hatami/
Kuscha Hatami, Esq.
Raj Abhyanker P.C. dba LegalForce
1580 W. El Camino Real
Suite 13
Mountain View, CA. 94040
Tel. 650.390.6429
Fax. 650.989.2131
Kuscha@legalforcelaw.com
Attorneys for Applicant
GQ Associates

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION is being served by mailing a copy thereof, postage prepaid, by United States Postal Service addressed to the following individual(s), identified in the Notice of Opposition as the attorney(s) of record and correspondent(s) on this 8th day of December, 2014:

Kristin Jordan Jarkins
Conley Rose, P.C.
5601 Granite Parkway, Suite 500
Plano, Texas 75024

Attorneys for Opposer

/Kuscha Hatami/
Kuscha Hatami
Raj Abhyanker P.C. dba LegalForce
1580 W. El Camino Real
Suite 13
Mountain View, CA. 94040
Tel. 650.390.6429
Fax. 650.989.2131
Kuscha@legalforcelaw.com
Attorneys for Applicant
GQ Associates