

ESTTA Tracking number: **ESTTA683459**

Filing date: **07/14/2015**

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

Proceeding	91221777
Party	Defendant H&M Hennes & Mauritz AB
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Signature	/Anderson J. Duff/
Date	07/14/2015
Attachments	EOS v H&M Answer to Opp.pdf(192512 bytes )

Registration Subject to the filing

Registration No	3908212	Registration date	01/18/2011
Registrant	EOS PRODUCTS LLC 19 W. 44TH STREET NEW YORK, NY 10036 UNITED STATES		

Goods/Services Subject to the filing

Class 003. First Use: 2002/03/00 First Use In Commerce: 2002/03/00 All goods and services in the class are requested, namely: Massage oils
Class 005. First Use: 2002/03/00 First Use In Commerce: 2002/03/00 All goods and services in the class are requested, namely: Medical lubricants, namely, vaginal lubricants

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

EOS PRODUCTS, LLC,

Opposer,

v.

Opposition No. 91221777

H&M HENNES & MAURITZ AB,

Applicant.

**ANSWER TO NOTICE OF OPPOSITION**

Applicant H & M Hennes & Mauritz AB ("Applicant") by and through its attorneys hereby answers the allegations contained in the Notice of Opposition ("Opposition") to Application Serial No. 79/148,505 for COS (stylized) ("Applicant's Mark") filed by eos Products, LLC ("Opposer") as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Opposition and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Opposition and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Opposition and therefore denies the same.
4. Applicant lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 4 of the Opposition and therefore denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the

allegation that it is the owner of common law and registered trademarks for the EOS and therefore denies the same, except that Applicant admits that Opposer is the owner of record of U.S. Registration nos. 3,908,212, 4,750,345, and 4,754,082.

6. Applicant admits the allegations in paragraph 6 of the Opposition.
7. Applicant admits the allegations in paragraph 7 of the Opposition.
8. Applicant admits the allegations in paragraph 8 of the Opposition.
9. Applicant admits the allegations in paragraph 9 of the Opposition.
10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Opposition and therefore denies the same.
11. Applicant admits the allegation in paragraph 11 of the Opposition.
12. Applicant denies the allegations set forth in paragraph 12 of the Opposition.
13. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Opposition and therefore denies the same.
14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Opposition and therefore denies the same.
15. Applicant denies the allegations in paragraph 15 of the Opposition.

#### **COUNTERCLAIM**

1. Opposer has asserted and relied upon ownership of U.S. Registration no.

3,908,212 for EOS (“Reg. No. ‘212 ”) as a basis for opposing Applicant’s Mark.

2. Upon information and belief, Opposer’s acquired ownership of Reg. No. ‘212 by means of an assignment recorded at Reel No. 5435, Frame No. 0613 in the Assignment Branch of the USPTO. The transfer of ownership was an assignment “in gross” since there was no *de facto* transfer of goodwill associated with the registered mark. Therefore, Opposer’s rights in the in the EOS Mark as embodied in Reg. No. ‘212 are null and void as a matter of law.

3. Upon information and belief, neither Opposer nor its predecessor-in-interest has used the registered EOS Mark for the goods covered in Reg. No. ‘212 in commerce for at least three (3) years prior to the filing date of this instant Notice of Opposition.

4. Upon information and belief, Opposer lacks a *bona fide* intention to use the EOS Mark for the goods covered by Reg. No. ‘212.

5. Upon information and belief, Opposer has abandoned all right, title, and interest in Reg. No. ‘212 as a result of its acquisition of the registration without a *de facto* transfer of the goodwill associated with the registered mark, its failure to use the mark in commerce, and its lack of having a *bona fide* intention to use the mark in the future.

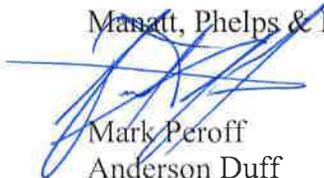
6. Applicant will be damaged by the existence of U.S. Reg. No. ‘212 in the respect that Opposer will be entitled to assert the presumptions of validity and ownership of this registration as a basis to prevent Applicant from obtaining registration of the Applicant’s Mark.

Wherefore, Applicant prays that the U.S. Reg. No. ‘212 be cancelled, that the Opposition be denied, and that judgment be entered in favor of the Applicant.

Dated: 7.14.15

New York, NY

Respectfully submitted,

  
Manatt, Phelps & Phillips, LLP

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Attorneys for Applicant  
H & M Hennes & Mauritz AB.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Applicant's **ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM** was served on the following counsel by first-class mail this 14<sup>th</sup> day of July, 2015:

Anna E. Raimer  
JONES DAY  
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Houston, TX 77002  
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Anderson J. Duff