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

Proceeding	91222051
Party	Defendant It's a 10, Inc.
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Date	09/22/2015
Attachments	Answer_amended notice of opposition_9.22.15.pdf(27357 bytes)

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

In the matter of Serial No. 86/346,128

KRAFT FOODS GROUP BRAND LLC)	
)	
Opposer,)	Opposition No. 91222051
)	
v.)	
)	
IT'S A 10, INC.)	
)	
Applicant.)	

**APPLICANT'S ANSWER TO OPPOSER'S FIRST AMENDED
NOTICE OF OPPOSITION**

Applicant, It's a 10, Inc., by and through undersigned counsel, hereby responds to the Notice of Opposition filed by Kraft Foods Group Brand LLC as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and accordingly denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and accordingly denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 with respect to Opposer's sales and the quality of its products and accordingly denies the same. Applicant denies the remaining allegations.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and accordingly denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and accordingly denies the same.
6. Applicant denies the allegations in Paragraph 6.

7. Applicant denies the allegations in Paragraph 7.
8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and accordingly denies the same. To the extent the second sentence constitutes a legal conclusion, no responsive pleading is required.
9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 and accordingly denies the same. To the extent the pleading constitutes a legal conclusion, no responsive pleading is required.
10. Applicant denies the allegations in Paragraph 10.
11. Applicant admits the allegations contained in Paragraph 11.
12. Applicant admits the allegations contained in Paragraph 12.
13. Applicant admits the allegations contained in Paragraph 13.
14. Applicant denies the allegations contained in Paragraph 14.
15. To the extent the allegations in this paragraph 17 are Opposer's legal conclusions, no responsive pleading is required. With respect to the remaining allegations, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly denies the same.
16. Applicant repeats and realleges each and every response and denial above as if fully set forth herein.
17. To the extent the allegations in this paragraph 17 are Opposer's legal conclusions, no answer is required.
18. Applicant denies the allegations in Paragraph 18.
19. Applicant denies the allegations in Paragraph 19.
20. Applicant denies the allegations in Paragraph 20.
21. Applicant denies the allegations in Paragraph 21.

22. Applicant denies the allegations in Paragraph 22.
23. Applicant repeats and realleges each and every response and denial above as if fully set forth herein.
24. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 and accordingly denies the same, except admits that Applicant filed an application to register MIRACLE WHIPPED on July 23, 2014 based on an intent to use the mark.
25. Applicant denies the allegations in Paragraph 25.
26. Applicant denies the allegations in Paragraph 26.
27. Applicant denies the allegations in Paragraph 27.
28. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.
29. Applicant denies the allegations in Paragraph 29.
30. To the extent the allegations in this paragraph 30 are Opposer's legal conclusions, no responsive pleading is required.
31. To the extent the first sentence in this paragraph 31 is Opposer's legal conclusions, no responsive pleading is required. Applicant denies the remaining allegations in this Paragraph 31.
32. Applicant denies the allegations in Paragraph 32.
33. Applicant denies the allegations in Paragraph 33.
34. Applicant denies the allegations in Paragraph 34.
35. Applicant denies the allegations in Paragraph 35.
36. Applicant denies the allegations in Paragraph 36.

37. Applicant repeats and realleges each and every response and denial above as if fully set forth herein.
38. Applicant denies the allegations in this Paragraph 38.
39. Applicant denies the allegations in this Paragraph 39.

AFFIRMATIVE DEFENSES

Discovery and investigation may reveal that any one or more affirmative defenses are available to Applicant in this action. On completion of discovery, and if the facts warrant, Applicant may assert or withdraw any affirmative defenses as may be appropriate.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Opposer's MIRACLE WHIPPED mark is not famous. There is no likelihood of dilution because Opposer cannot meet the stringent standards for fame under 15 U.S.C.S. §1125(c). A large segment of the population, including the younger target audience for Applicant's goods, are not aware of Opposer's products sold under its mark MIRACLE WHIPPED.

THIRD AFFIRMATIVE DEFENSE

Applicant is the owner of 29 valid and subsisting federal trademark registrations for marks substantially the same as the mark at issue in this matter and for the same goods, namely, trademarks comprised of the term MIRACLE for hair care products. Accordingly, the the current registration sought in this action causes no added injury to the Opposer. Applicant's mark at issue in this action is consistent with an extension of its product line.

Applicant's registrations and Opposer's registration have peacefully coexisted for at least 10 years without opposition from Opposer.

FOURTH AFFIRMATIVE DEFENSE

The term "WHIP" as used in Opposer's mark in connection with food products is generic.

FIFTH AFFIRMATIVE DEFENSE

Opposer has not used the mark MIRACLE WHIPPED in commerce for hair care products or any goods related thereto.

Wherefore, Applicant prays that the opposition be dismissed and that the registration issue for Application Serial No. 86/346,128.

Dated: September 22, 2015

Respectfully submitted,
Merry L. Biggerstaff/
Merry L. Biggerstaff
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO THE AMENDED NOTICE OF OPPOSITION has been served by delivering said copy *via* First-Class mail to counsel for Petitioner as follows:

Susan H. Frohling
Kraft Foods Group Brands LLC
Three Lakes Drive
Northfield, IL
60093

Dated: September 22, 2015

/Merry L. Biggerstaff/
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