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

Proceeding	91222404
Party	Defendant American Silver, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

UNDER ARMOUR, INC.,

Opposer,

v.

AMERICAN SILVER, LLC,

Applicant.

OPPOSITION NO. 91222404

Mark: ARMOUR GEL

Int'l Class: 005

Serial No.: 86/232,097

Filed: March 26, 2014

Published: February 17, 2015

**AMERICAN SILVER, LLC'S ANSWER TO
FIRST AMENDED NOTICE OF OPPOSITION**

Applicant American Silver, LLC (“American Silver” or “Applicant”) hereby answers the numbered allegations set forth in the First Amended Notice of Opposition filed by Opposer Under Armour, Inc. (“Under Armour” or “Opposer”), as follows:

Under Armour and its Alleged Products and Trademarks

1. American Silver lacks knowledge or information sufficient to form a belief regarding the factual allegations set forth in the first and last sentences of Paragraph 1 of the First Amended Notice of Opposition and therefore denies the same. American Silver denies the remaining allegations of Paragraph 1 of the First Amended Notice of Opposition.

2. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the First Amended Notice of Opposition and therefore denies the same.

3. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the First Amended Notice of Opposition and therefore denies the same.

4. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. American Silver denies that such records reflect significant growth and expansion by Opposer over the years. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 4 of the First Amended Notice of Opposition, and therefore denies the same.

5. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the First Amended Notice of Opposition and therefore denies the same.

6. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the First Amended Notice of Opposition and therefore denies the same.

7. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the First Amended Notice of Opposition and therefore denies the same.

8. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the validity, ownership, or assignment of trademark registrations or as to the truth of

any other allegations contained in Paragraph 8 of the First Amended Notice of Opposition and therefore denies the same.

9. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the First Amended Notice of Opposition and therefore denies the same.

10. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the First Amended Notice of Opposition and therefore denies the same.

11. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the First Amended Notice of Opposition and therefore denies the same.

12. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the First Amended Notice of Opposition and therefore denies the same.

13. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the First Amended Notice of Opposition and therefore denies the same.

14. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the First Amended Notice of Opposition and therefore denies the same.

15. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the First Amended Notice of Opposition and therefore denies the same.

16. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the First Amended Notice of Opposition and therefore denies the same.

17. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the First Amended Notice of Opposition and therefore denies the same.

18. American Silver denies the allegations set forth in Paragraph 18 of the First Amended Notice of Opposition.

19. American Silver admits that the Trademark Trial and Appeal Board of the United States Patent and Trademark Office issued an opinion in *Under Armour, Inc. v. Bode*, Opp. 91178653 (TTAB May 21, 2009) but denies that the TTAB's opinion in *Under Armour, Inc. v. Bode* has any precedential or other factual or legal effect in the present matter.

20. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and/or TSDR databases speak for themselves. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the validity, ownership, or assignment of trademark registrations or as to the truth of other allegations contained in Paragraph 20 and Exhibit A of the First Amended Notice of Opposition, and therefore denies the same.

21. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registration applications and ownership as reflected in the TESS and TSDR databases speak for themselves. American Silver lacks knowledge or information sufficient to form a belief as to the truth of all other allegations contained in Paragraph 21 of the First Amended Notice of Opposition, and therefore denies the same.

22. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the validity, ownership, or assignment of trademark registrations or as to the truth of any other allegations contained in Paragraph 22 and Exhibit B of the First Amended Notice of Opposition, and therefore denies the same.

Applicant and Its Mark

23. American Silver admits that it is a Utah limited liability company, but denies all other allegations set forth in Paragraph 23 of the First Amended Notice of Opposition.

24. American Silver admits the allegations set forth in Paragraph 24 of the First Amended Notice of Opposition.

25. American Silver affirmatively asserts and alleges that it intends to use the ARMOR GEL mark described in U.S. Trademark Registration Application 86/232,097 with the goods identified in Application No. 86/232,097 (*i.e.*, "Hydrogel for medical purposes") as set forth in the Application and further alleges that the Application speaks for itself. All allegations contained in Paragraph 25 of the First Amended Notice of Opposition inconsistent with U.S. Trademark Registration Application No. 86/232,097 are hereby denied.

Count One
Likelihood of Confusion, 15 U.S.C. § 1052(d)

26. American Silver incorporates herein by reference each of the admissions, denials, and/or allegations contained in Paragraphs 1 through 25 of its Answer to the First Amended Notice of Opposition as if fully set forth herein.

27. American Silver lacks knowledge or information sufficient to form a belief as to the truth of whether all of Opposer's alleged marks were registered or applied for registration

before the filing date of the U.S. Trademark Registration Application No. 86/232,097, and therefore denies the same. American Silver also affirmatively alleges and asserts that Opposer lacks seniority with respect to any trademark or trademark rights for any marks confusingly similar to Applicant's ARMOR GEL mark as described in U.S. Trademark Registration Application No. 86/232,097 or for any related goods or services.

28. American Silver denies the allegations set forth in Paragraph 28 of the First Amended Notice of Opposition.

Count Two
Dilution, 15 U.S.C. § 1125(c)

29. American Silver incorporates herein by reference each of the admissions, denials, and/or allegations contained in Paragraphs 1 through 28 of its Answer to the First Amended Notice of Opposition as if fully set forth herein.

30. American Silver denies the allegations set forth in Paragraph 30 of the First Amended Notice of Opposition.

31. American Silver denies the allegations set forth in Paragraph 31 of the First Amended Notice of Opposition.

32. American Silver denies the allegations set forth in Paragraph 32 of the First Amended Notice of Opposition.

33. All allegations set forth in Opposer Under Armour's First Amended Notice of Opposition not expressly admitted herein, are hereby denied.

AFFIRMATIVE DEFENSES

Without admitting the allegations set forth in Opposer Under Armour's First Amended Notice of Opposition, Applicant, American Silver alleges and asserts the following defenses, affirmative or otherwise, without assuming any burden of proof that it would not otherwise have.

In addition to the defenses (affirmative or otherwise) described below and subject to its responses above, Applicant specifically reserves all rights to allege additional defenses, affirmative or otherwise, that become known through the course of discovery.

1. The term ARMOUR is highly diluted as a trademark formative, and hence exceptionally weak, and Opposer's purported rights extend no further, if at all, than to the specific marks for which Opposer alleges it owns trademark registrations, none of which are the same as or confusingly similar to Applicant's mark in terms of connotation, appearance, and/or pronunciation, and none of which are for related goods or services.

2. Opposer's alleged trademarks are not famous in any relevant field of goods or services. To the extent any of Opposer's marks have become famous in any relevant field of goods or services, which is hereby expressly denied, on information and belief, such alleged fame arose, if at all, after Applicant's first use of its ARMOR GEL mark.

3. Opposer's alleged trademarks and Applicant's ARMOR GEL mark are dissimilar in appearance, sound, connotation, and/or overall commercial impression and will not create a likelihood of confusion or dilution when applied to the relevant goods.

4. Opposer does not have or own any trademark registrations or common law trademark rights covering any goods or services related to the goods or services identified in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the First Amended Notice of Opposition.

5. Applicant's ARMOR GEL mark as set forth in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the First Amended Notice of Opposition, does not and will not impair or harm any of Opposer's alleged trademark rights in any meaningful way and would not result in any dilution of Opposer's alleged trademarks.

6. Opposer does not have or own any trademark registrations or common law trademark rights for any mark for any goods or services that are related to the goods set forth in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the First Amended Notice of Opposition.

7. Applicant reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law or in equity that may now exist or in the future be available based on discovery and further factual investigation in this case.

WHEREFORE, Applicant American Silver respectfully requests that:

1. The First Amended Notice of Opposition be dismissed with prejudice; and
2. That a Notice of Allowance be issued in U.S. Trademark Registration Application No. 86/232,097.

Respectfully submitted this 26th day of January, 2016.

/Perry S. Clegg/
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of January, 2016, a true and correct copy of the foregoing AMERICAN SILVER, LLC'S ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION and this CERTIFICATE OF SERVICE were served on Opposer by email, pursuant to stipulation by the parties regarding electronic service, as follows:

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/s/ Perry S. Clegg _____