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

Proceeding	91223718
Party	Defendant N9ne Athletics, LLC
Correspondence Address	MARK D. BURISH HURLEY, BURISH & STANTON, S.C. 33 E MAIN ST STE 400 MADISON, WI 53703-3095  pengel@hbslawfirm.com
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Date	12/18/2015
Attachments	Answer.pdf(66082 bytes )

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

PROCEEDING NO. 91223718

Trenidad Hubbard,

Opposer

v.

N9NE Athletics, LLC

Applicant.

Serial No. 86311603

Mark: MY GAME FACE INCLUDES MASCARA and design

**ANSWER TO NOTICE OF OPPOSITION**

Respondent, N9NE Athletics, LLC (“Applicant”), by its attorneys, Boyle Fredrickson, S.C., as and for its Answer to the claims asserted in the Notice of Opposition (“Opposition”) filed on behalf of Opposer, Trenidad Hubbard (“Opposer”), denies that Opposer will be damaged by the registration of Applicant’s mark MY GAME FACE INCLUDES MASCARA and design (Serial No. 86311603) (the “Opposed Mark”). With respect to the specific assertions in the Opposition, Applicant responds as follows:

1. Applicant is without sufficient information to admit or deny the allegations in Paragraph 1 of the Opposition and therefore denies the same.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted that Opposer's claimed date of first use is prior to Applicant's claimed date of first use. Denied that Opposer actually began and maintained its alleged use so as to constitute proper prior use of the mark GAMEFACE in Opposer's pending application (Serial No. 8659361).
6. Denied.
7. Denied.
8. Denied.
9. Denied.

#### **AFFIRMATIVE DEFENSES**

1. There is no likelihood of confusion between the Opposed Mark and the mark applied for in Opposer's Pending Application (the "Claimed Mark") and therefore there is no basis for denying Applicant a registration.
2. Opposer has not used its Claimed Mark as a trademark in commerce so as to be able to establish prior use of the mark.
3. To the extent Opposer has made any trademark use of its claimed marks, its use has been geographically limited to only a small portion of the country.
4. To the extent Opposer has made any trademark use of its claimed marks, its use has been in different channels of trade from those in which Applicant's mark will be used.
5. To the extent Opposer has made any trademark use of its claimed marks, its goods have been marketed to and used by different consumers from those of Applicant.

6. Opposer has no exclusive rights in the term GAMEFACE or GAME FACE.
7. To the extent Opposer has any rights in the term GAME FACE or GAMEFACE those rights are so weak and circumscribed by virtue of third party uses and registrations, they are insufficient to establish any likelihood of confusion with the Opposed Mark.
8. Opposer's opposition is barred by laches and/or estoppel.
9. Opposer's opposition is barred by unclean hands.

WHEREFORE Applicants respectfully requests that the Opposition be denied and/or dismissed in its entirety.

Date: December 18, 2015

/Adam L. Brookman/

Adam L. Brookman  
Kyle M. Costello  
Boyle Fredrickson, S.C.  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer has been served by mailing a copy on December 18, 2015, via First Class Mail, postage prepaid to:

Susan B. Meyer  
Gordon & Reese LLP  
101 W. Broadway, Suite 1600  
San Diego, CA 92101

/Adam L. Brookman/  
Adam L. Brookman