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

Proceeding	91224158
Party	Defendant Leivaire Inc
Correspondence Address	LEIVAIRE INC 3601 HWY 7 EAST HSBC TOWER, SUITE 302 MARKHAM, L3R0M3 CANADA
Submission	Answer
Filer's Name	Christopher Civil
Filer's e-mail	christopher@legalforcelaw.com, savannah@legalforcelaw.com, disputes@legalforcelaw.com
Signature	/chris civil/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

LAVERANA GMBH & CO. KG

Plaintiff,

v.

Leivaire Inc.

Defendant.

Mark: LEIVAIRE

Serial No.: 86493030

Proceeding No.: 91224158

Date of Publication: June 2, 2015

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER’S NOTICE
OF OPPOSITION**

Applicant, Leivaire Inc., a corporation of Canada with a principal place of business at 3601 Hwy 7 East HSBC Tower Suite 302 MARKHAM L3R0M3 (“Applicant”), through its undersigned attorneys, submits its Answer and Affirmative Defenses to the Notice of Opposition (“Opposition”) filed by Laverana GmbH & Co. KG (“Opposer”) on September 30, 2015 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 mark(s) sufficient to constitute a basis for this Opposition.

In response to the first unnumbered paragraph, 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 owns Serial No. 86493030. Except as expressly

admitted, Applicant denies each and every remaining allegation in the first unnumbered paragraph of the Opposition.

In response to the second unnumbered paragraph, Applicant responds that this paragraph contains legal conclusions of the Opposer, for which no response is required. To the extent that a response is required, Applicant denies each and every allegation in the second unnumbered paragraph of the Opposition

1. In response to Paragraph 1, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies each and every allegation in paragraph 1 of the Opposition.
2. In response to Paragraph 2, Applicant admits that the records of the TSDR of the USPTO reflect that Opposer is the owner of Registration No. 2687717 in International Class 003 in connection with “Cosmetics, namely, face creams and lotions, skin cleansers, personal hygiene products, namely, shower gels, shampoos and body lotions, sun screen preparations; products for babies' and children's care, namely, bathing oils, shampoos, skin oils and creams; men's care products, namely, shaving cream, aftershave balms, shower shampoos and deodorants; hair lotions, dentifrices, perfume, foot creams and lotions; foot care products, namely, abrasive devices in the nature of pumice stones, rasps, or files for treating corns and calluses, non-medicated powders and liquids for bathing feet, and non-electric massage devices, specifically, devices designed for massaging feet; decorative cosmetics, namely, tinted moisturizing creams, makeup, compact face powders and rouges, cover-up sticks, lipsticks, eye-decorating pencils and mascara.”. Applicant admits that the records of the TSDR of the USPTO reflect that Opposer is the owner of Registration No. 4230293 in International Class 003 for “After-

shave products, namely, lotions, cologne, balms, creams, emulsions, and gels; shaving preparations, namely, foams and gels; after-sun care products, namely, creams, gels, lotions, milks, and oils; age-retardant products, namely, gels, creams, and lotions; deodorants for personal use; anti-aging products, namely, cleansers, creams, moisturizers, and toners; anti-wrinkle creams; aromatherapy body care products, namely, body lotions, shower gels, shampoos, conditioners, non-medicated lip balms, soaps, body polish, body and foot scrub and non-medicated foot creams, oils, and sprays; baby skin and hair care products, namely, lotions, oils, powders, shampoos, hair conditioners; bath and shower products, namely, gels, salts, mineral salts, creams, lotions, oils, and soaps in liquid, or gel form not for medical purposes; beauty products, namely, creams, gels, lotions, masks, milks, and serums; body and beauty care cosmetics, namely, body creams, body deodorants, body lotions, body mask creams, body mask lotions, body milks, body oils, spray used as a personal deodorant and as fragrance, and body washes; cleansing products, namely, creams, milk; colognes and perfumes; color cosmetic products, namely, blush, blush pencils, chalk for cosmetic use, pencils, eyeliners, eye make-up, eye shadows, eyebrow cosmetics, face highlighters, rouges, lip liners, lipsticks, concealers for face and body, make-up, creamy face powder, glitter powder, pressed face powder, creamy foundation, foundation make-up, loose face powder, mascaras, and creamy rouges; cosmetic preparations, namely, preparations against sunburn, sun-tan preparations, and sun-protecting preparations; eye skin care products, namely, creams, gels, lotions, masks, and make-up removers; facial skin care products, namely, creams, milks, lotions, night cream, beauty masks, cleansers, creams, emulsions, scrubs, washes; hair care products, namely, conditioners, shampoos, hair dressing preparations, lotions,

gels, mousse, and sprays; hand skin care products, namely, cleaners, creams, soaps, lotions, and scrubs; lip care products, namely, balms, creams, and gloss; dental care products, namely, dentifrices; essential oils for personal use; exfoliant creams for skin; perfumed and scented skin care products, namely, creams, powder, lotions, cream soaps, and soaps; skin moisturizing products, namely, creams, milks, and lotions; skin clarifiers; skin cleansers; skin fresheners; wrinkle removing skin care preparations; wrinkle resistant creams; wrinkle-minimizing cosmetic preparations for topical facial use.” Applicant admits that the records of the TSDR of the USPTO reflect that Opposer is the owner of Serial No. 85824482 in International Class 003 in connection with “Non-medicated skin care preparations; beauty preparations, namely, cosmetics; non-medicated milks, tonics, lotions, creams, emulsions, and gels for the face and body; non-medicated cleansing preparations for the face and body; skin astringents for cosmetic purposes; body mist; non-medicated foot soaks, depilatory creams; pumice stones for personal use; soaps; bubble bath; shower creams and gels; non-medicated skin care preparations, namely, skin exfoliating products; make-up removing preparations for the face; talcum powder; shampoos; hair lotions, oils, conditioners and repair preparations; hair dyes; hair spray, gel and mousse; hair brighteners; hair mascaras; shaving creams and gels; after-shave gels and lotions; perfumery; deodorants for personal use; essential oils; bath beads; bath oils and salts; cosmetics; skin masks; foundation cream; blush; bronzing powder; make up powder; facial shimmer preparations; mascara; eyeliners; cosmetic eye and lip pencils; eye shadows; lip balms; lip gloss; lipsticks; makeup removing preparations; nail polish; nail forms; false nails; nail polish remover; cuticle creams; preparations for strengthening nails; non-medicated concealer sticks; body glitter; sun-tanning lotions and creams for

the face and body; fake tan lotions and creams for the face and body; sunscreen creams; after sun lotions and creams for the face and body; Perfumes, eaux de toilette; bath and shower gels and salts not for medical purposes; toilet soaps; cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; cosmetics, namely, sun-tanning milks, gels and oils and after-sun preparations; make-up preparations; shampoos; gels, mousses, balms and preparations in aerosol form for hairdressing and hair care; hair lacquers; hair-coloring and hair-decolorizing preparations; preparations for waving and setting hair; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturizing creams, make-up, foundation, face powder and rouge; blemish stick, lip pencils, eyeliner pens and mascara, eye shadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants for skin; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; non-medicated body care products, namely, creams, lotions and polish; shower gels; hair care products, namely, shampoos, hair lotions, conditioning rinses, conditioners, combined shampoo and conditioner, hair sprays, styling mousse and gels; hair dyes; baby and infant care products, namely, baby creams, baby shampoos, and baby toothpaste; bath oils; skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men, namely, shaving cream, after-shave balms; products for oral hygiene, not for medical purposes, namely, toothpaste; preparations for the mouth and for cleaning the mouth, breath-freshening and mouth-freshening preparations, namely, mouth sprays, mouth rinses, dentifrices, and toothpaste; antiperspirants”, in International Class 005 in connection with “Pharmaceutical products, namely, for the treatment of neurodermitis, acne, skin irritations, skin care problems;

health-care products, namely, vitamins and dietary supplements; medicated lubricants; dietetic foods, namely, crackers, sweets, yogurts adapted for medical use; sanitary preparations for medical use; vitamin preparations; disinfectants for hygiene purposes; royal jelly for medical purposes; herbal teas for medicinal purposes; natural remedy preparations, namely, corn remedies for the treatment of hormonal and chemical imbalances, sleep disorders, skin care problems; headache pencils; lactose for medical purposes; milking grease for medical purposes; dietetic substances and beverages for babies, infants and children, namely, baby food and electrolyte beverages for medical purposes; nutritional supplements that may contain proteins, glucides, lipids, peptides and/or fibres, or micronutrients such as vitamins and/or minerals and/or amino acids and/or fatty acids and/or plants, and/or vegetable extracts and/or purified molecules extracted from vegetables, for beauty and skin, body, face, hair or nail care, in the form of capsules, tablets, ampules, yeast, powders, bars, creams or drinks, for medical and/or cosmetics and/or food purposes; nutritional additives for medical purposes in the nature of natural food extracts derived from meat, fish, poultry and game, meat extracts, fruit and canned vegetables, dried and cooked, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, for beauty and skin, body, face, hair or nail care in the form of capsules, tablets, vials, yeast, powders, bars, creams or beverages, for medical and/or cosmetics and/or food purposes; nutritional supplements that may contain coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionary, ices, honey, treacle, yeast, baking powder, salt, mustard, vinegar, sauces, condiments, spices, ice, for beauty and skin, body, face, hair or nail care, in the form of capsules, tablets, ampules, yeast, powders, bars, creams or

drinks, for medical and/or cosmetics and/or food purposes; nutritional additives for medical purposes in the nature of natural food extracts derived from agricultural, horticultural, forestry and seed products, fresh fruit and vegetables, seeds, plants and natural flowers, for beauty and skin, body, face, hair or nail care in the form of capsules, tablets, vials, yeast, powders, bars, creams or beverages, for medical and/or cosmetics and/or food purposes; nutritional additives for medical purposes in the nature of natural food extracts for beauty and skin, body, face, hair or nail care in the form of vials for drinking or beverages, for medical and/or cosmetics and/or food purposes,” in International Class 032 in connection with “Anti-aging beverages, namely, beauty beverages, namely, energy drinks containing nutritional supplements” and in International Class 044 in connection with “Medical services; medical clinics; health care services, namely, home health care services, managed health care services, and holistic health care services; hygienic and beauty care services; aromatherapy services; massage; manicuring; beauty salons, hairdressing salons; hygienic and beauty care; health care consultancy; operating of wellness equipment, namely, operating beauty salons and medical healing and thermal spas; consultancy in the field of hygienic and beauty care, in particular in the field of decorative cosmetics and anti-aging; nutrition consultation.” Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 2 of the Opposition.

3. In response to Paragraph 3, Applicant admits that the records of the TSDR of the USPTO reflect that Applicant is a corporation of Canada with a principal place of business at 3601 Hwy 7 East HSBC Tower Suite 302 MARKHAM L3R0M3. Applicant admits that the records of the TSDR of the USPTO reflect that Applicant is the owner of U.S.

Application Serial No. 86493030, which was filed on Dec. 31, 2014 in International Class 035 for “Import and export agencies; Customs clearance services”, International Class 041 for “Education services, namely, providing classes, seminars, and workshops on real estate, financial planning and investing”, and International Class 042 for “Providing temporary use of on-line non-downloadable cloud computing software for use in database management in the fields of Enterprise Resource Planning (ERP), Customer Relationship Management (CRM) and related critical business systems.” Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 3 of the Opposition.

4. In response to Paragraph 4, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every remaining allegation in paragraph 4 of the Opposition.
5. In response to paragraph 5, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant states that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies each and every allegation in paragraph 5 of the Opposition.
6. In response to paragraph 6, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every allegation in paragraph 6 of the Opposition.

In response to the final unnumbered paragraph, Applicant denies each and every remaining allegation in the final unnumbered paragraph of the 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**

7. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE **LACK OF STANDING**

8. 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.

THIRD AFFIRMATIVE DEFENSE **NO INJURY OR DAMAGE**

9. 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 mark

FOURTH AFFIRMATIVE DEFENSE **NO BASIS**

10. Opposer has no basis either in law or fact, to sustain an opposition of Applicant's mark.

FIFTH AFFIRMATIVE DEFENSE
LACK OF LIKLIHOOD OF CONFSUON

11. Applicant argues that 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.
12. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark and has a distinct commercial impression from Opposer's claimed mark.
13. Applicant's mark does not create a likelihood of confusion among the relevant purchasing public that Applicant's products are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use of Applicant's mark create the likelihood that consumers will falsely believe that Applicant and Opposer are affiliated in any way.

SIXTH AFFIRMATIVE DEFENSE
LACK OF ACTUAL OF CONFUSION

14. Applicant has not experienced any confusion with Opposer or its goods and/or services. On information and belief, Opposer also has not experienced any actual confusion with Applicant or its goods.

SEVENTH AFFIRMATIVE DEFENSE
LACHES

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

EIGHTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

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

NINTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

17. Opposer's claims are barred, in whole or in part, because Petitioner cannot establish prior exclusive rights in the United States sufficient to bar Applicant's continued registration of its marks.

TENTH AFFIRMATIVE DEFENSE
WAIVER

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

ELEVENTH AFFIRMATIVE DEFENSE
ESTOPPEL

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

TWELFTH AFFIRMATIVE DEFENSE
DIFFERING COMMERCIAL IMPRESSIONS

20. Applicant's Mark and Opposer's Marks have very different commercial impressions.

THIRTEENTH AFFIRMATIVE DEFENSE
STRICT PROOF

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

FOURTEENTH AFFIRMATIVE DEFENSE

Applicant reserves the right to assert any and all other affirmative defenses of which it 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 be granted further reasonable and appropriate relief.

Dated: November 9, 2015

Respectfully Submitted,



Christopher Civil
Raj Abhyankar, P.C.
451 N. Shoreline Ave
Mountain View, CA, 94043
Tel. 650.390.6384
Fax. 650.989.2131

Attorneys for Applicant

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, by post-paid U.S. Mail addressed to the following individuals, identified in the Notice of Opposition as the attorneys of record and correspondents on this 9th day of November, 2015:

Susan Neuberger Weller
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W. Suite 900
Washington, DC 20004

and a courtesy copy via email to:

snweller@mintz.com
jddib@mintz.com

/s/ Chris Civil

Christopher Civil
Raj Abhyanker, P.C.
451 N. Shoreline Ave
Mountain View, CA. 94043
Tel. 650.390.6384
Fax. 650.989.2131

Attorneys for Applicant