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

Proceeding	91224533
Party	Defendant Dazzle Up, LLC
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Submission	Answer
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Date	12/31/2015
Attachments	Answer.pdf(39427 bytes)

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

Opposition No. 91224533
Application Serial No. 86/450,713

SIMPLY SOUTHERN FINE ARTS AND HOME DÉCOR, LLC,)
Opposer,)
)
v.)
)
DAZZLE UP, LLC,)
Applicant.)

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Dazzle Up, LLC (“Applicant”), by and through undersigned counsel, hereby answers and responds to the Notice of Opposition (the “Notice”) of Simply Southern Fine Arts and Home Décor, LLC (“Opposer”) as follows:

**FIRST DEFENSE
(Answer to Allegations of Notice of Opposition)**

Responding to the numbered paragraphs of the Notice, Applicant states as follows:

1. Applicant lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 1 of the Notice, and therefore denies the same.

2. Responding to the allegations of paragraph 2 of the Notice, it is admitted that the records of the United States Patent and Trademark Office (“USPTO”) reflect some of the information alleged in paragraph 2 of the Notice, such as the referenced trademark registration, the recited goods, and the last listed owner of such registration. Except as expressly admitted,

Applicant lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 2 of the Notice, and therefore denies the same.

3. Applicant lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 3 of the Notice, and therefore denies the same.

4. Responding to the allegations of paragraph 4 of the Notice, it is admitted that on November 11, 2014, Applicant filed trademark application Serial No. 86/450,713 (the "Application"). To the extent that paragraph 4 of the Notice alleges that a copy of the Application is attached to the Notice as Exhibit A, such allegation is denied. Except as expressly admitted, Applicant lacks information or knowledge sufficient to form a belief as to the allegations contained in paragraph 4 of the Notice, and therefore denies the same.

5. Applicant denies the allegations contained in paragraph 5 of the Notice.

6. Responding to the allegations of paragraph 6 of the Notice, Applicant admits that that Opposer has not informed Applicant that it has granted any trademark rights to Applicant; that Applicant is not affiliated with, connected with, endorsed by, or sponsored by Opposer; and that Opposer has not informed Applicant that it has approved any of the goods offered or sold, or intended to be sold by Applicant under the Opposed Mark. Except as expressly admitted, Applicant denies the allegations in paragraph 6 of the Notice.

7. Responding to the allegations of paragraph 7 of the Notice, Applicant admits that the mark for which registration is sought through its application Serial No. 86/450,713 is SIMPLY SOUTHERN. Except as expressly admitted, Applicant denies the allegations contained in paragraph 7 of the Notice.

8. Applicant denies the allegations contained in paragraph 8 of the Notice.

9. Applicant denies the allegations contained in paragraph 9 of the Notice.

10. Applicant denies the allegations contained in paragraph 10 of the Notice.

11. Applicant denies the allegations contained in paragraph 11 of the Notice.

With respect to Opposer's prayer for relief, Applicant expressly denies Opposer is entitled to any relief.

ADDITIONAL DEFENSES/RESPONSES

Applicant asserts the following additional defenses or responses to the Notice. The fact of an assertion below and herein does not amount to an admission or a denial that the matter set forth is properly characterized as an affirmative defense as opposed to a specific denial of a matter for which the Opposer bears the burden of proof, as such a determination is a matter of law for the Board. Applicant reserves the right to, and may assert any and all other valid defenses and/counterclaims that may be learned of or developed through discovery and/or testimony in this proceeding.

SECOND DEFENSE (Failure to State a Claim—Fed. R. Civ. P. 12(b)(6))

The allegations asserted in the Notice fail to state a claim upon which relief can be granted against Applicant in this proceeding and should be dismissed.

THIRD DEFENSE (No Likelihood of Confusion)

The goods recited in the Application are different from the retail and online ordering services recited in the cited Registration and other goods/services with which Opposer alleges that it has used its alleged mark and on which it bases this Opposition, and there is no likelihood of confusion.

**FOURTH DEFENSE
(Abandonment)**

Upon information and belief, United States trademark registration Serial No. 3,335,887 was abandoned by Opposer or Opposer's purported predecessor in interest, and thus is not a proper basis on which to oppose the application.

**FIFTH DEFENSE
(Opposer Owns No Rights in the Cited Registration)**

Upon information and belief, Opposer's purported predecessor in interest abandoned the cited Registration prior to allegedly assigning his interest in the Registration to Opposer. Consequently, the assignment of the cited Registration to Opposer is invalid and Opposer owns no valid trademark rights to the cited Registration, and thus it is not a proper basis on which to oppose the application.

**SIXTH DEFENSE
(Different Marks; Lack of Prior Rights)**

Upon information and belief, the name and mark used by Opposer is Simply Southern Fine Arts and Home Décor, not Simply Southern. Upon information and belief, Opposer cannot establish prior use and/or prior rights as compared to Applicant with respect to any allegedly confusingly similar mark.

WHEREFORE, Applicant requests that this Notice of Opposition proceeding be dismissed with prejudice and that Applicant's application be allowed to mature to registration.

Respectfully submitted this the 31st day of December, 2015.

/s/ David W. Sar
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on Opposer (via its counsel) by mailing said copy on December 31, 2015 via e-mail and First Class Mail, postage prepaid, and addressed as follows:

Warner J. Delaune
Baker Donelson Bearman Caldwell & Berkowitz, P.C.
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/s/ David W. Sar _____
David W. Sar