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

Proceeding	91225315
Party	Defendant AS IP Holdco, LLC
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Date	01/14/2016
Attachments	Answer to Notice of Opposition - Delta Faucet.pdf(1227160 bytes)

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

DELTA FAUCET COMPANY,		
	Opposer,	Opposition No. 91/225,315 Application No. 86/720,985
v.		
AS IP HOLDCO, LLC,		
	Applicant.	

ANSWER TO NOTICE OF OPPOSITION

Applicant AS IP HOLDCO, LLC ("Applicant") the owner of DXV LYNDON Application No. 86/720,985 for its Answer to Opposer Delta Faucet Company's Notice of Opposition, through Applicant's attorneys Ladas & Parry LLP, answers as follows:

1. As to the prefatory statements in the Notice of Opposition, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except denies that Opposer would be damaged by DXV LYNDON Application No. 86/720,985.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Notice of Opposition and therefore denies same.

3. Applicant admits that Opposer purports to own LINDEN Application No. 86/361,010, respectfully refers the Board to the referenced TESS page for its content and lacks knowledge sufficient to form a belief as to the remaining allegations set forth in paragraph 2 of the Notice of Opposition and therefore denies same.

4. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Notice of Opposition, except admits that Applicant's prior valid and subsisting LYNDON Registration No. 4,625,940 was cited as a potential bar to registration and refers the Board to the Office Action issued by the USPTO Examiner on November 24, 2014 for the contents thereof.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Notice of Opposition, except admits LYNDON Registration No. 4,625,940 is the subject of Cancellation No. 92/061,540.

6. Applicant denies the allegations set forth in paragraph 5 of the Notice of Opposition, except admits that it filed DXV LYNDON Application No. 86/720,985 on August 11, 2015.

7. To the extent understood, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Notice of Opposition and therefore denies same.

8. To the extent understood, Applicant denies the allegations contained in paragraph 7 of the Notice of Opposition, except admits that Applicant filed DXV LYNDON Application No. 86/720,985 without seeking Opposer's prior written consent.

9. Applicant denies the allegations set forth in paragraph 8 of the Notice of Opposition.

10. Applicant denies the allegations set forth in paragraph 9 of the Notice of Opposition.

First Affirmative Defense

Opposer's LINDEN Application No. 86/361,010 is named after the Linden Tree and embodies a wholly distinguishable and different commercial impression from Applicant's DXV LYNDON Mark, which is an arbitrary composite trademark with relation to the goods and the LYNDON portion is used as a male given name in common parlance and DXV relates to a line of Applicant's goods.

Second Affirmative Defense

Given that Opposer's LINDEN application is intended to describe or suggest that the shape and design of Opposer's products are similar to the LINDEN tree (per Opposer's marketing materials), Opposer's trademark is descriptive of the appearance of its goods, is not entitled to a broad scope of protection and negates confusion between the goods of Opposer and Applicant. This descriptive aspect of Opposer's mark further distinguishes it from Applicant's mark, which is arbitrary as applied to Applicant's goods, the shapes of which are distinctly and dramatically different from Opposer's goods.

Third Affirmative Defense

Opposer has unclean hands barring the relief sought in its Notice of Opposition. Opposer, a large sophisticated corporation, has been knowingly, falsely and deliberately using LINDEN with the "®" trademark registration symbol in connection with its goods despite the fact that Petitioner does not own a federal trademark registration. Opposer has falsely engaged in such knowing trademark notice misuse to deceive consumers and the public. In fact, Opposer knew that the USPTO issued an Office Action on November 24, 2014 wherein the Examiner cited Applicant's LYNDON Registration No. 4,625,940 as a bar to registration under Section 2(d) likelihood of confusion grounds. Further, on May 21, 2015 Applicant filed an amendment

to its Application restricting its goods to "faucets and showerheads" and noted its separate Cancellation action brought by Opposer against Applicant's LYNDON Registration No. 4,625,940. The USPTO then issued an Office Action on May 22, 2015 suspending Opposer's LINDEN Application. Thus, Opposer was plainly on express notice that it does not own a trademark registration for LINDEN, but nevertheless knowingly and falsely claims that it owns a registration in order to deceive purchasers, consumers and the public.

Fourth Affirmative Defense

Opposer should be equitably estopped from claiming that Applicant's DXV LYNDON Application No. 86/720,985 is likely to cause confusion or otherwise harm Opposer, because Opposer is knowingly and falsely deceiving the public through its trademark notice misuse, by knowingly and falsely claiming that it owns a trademark registration for LINDEN. Opposer, a large, sophisticated corporation, plainly knows that it does not own a registration for LINDEN. Because of Opposer's own deliberate, knowing, false trademark registration misuse undertaken for the purpose of deceiving consumers and the public, Opposer's Notice of Opposition should be dismissed on equitable grounds and/or Opposer should be equitably estopped from obtaining the relief sought in its Notice of Opposition.

For all of the foregoing reasons, Opposer's Notice of Opposition must be dismissed in its entirety.

Respectfully submitted,
LADAS & PARRY LLP
Attorneys for Registrant

Dated: January 14, 2015

By: _____

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CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: January 14, 2015

Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served on the person(s) listed below by First-Class Mail, postage prepaid, on the date indicated:

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Dated: January 14, 2015

Reinaldo M. Roa