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

Proceeding	91225690
Party	Defendant Aderans Company Limited
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Date	03/16/2016
Attachments	Answer to Notice of Opposition.pdf(635857 bytes)

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

IN THE MATTER OF TRADEMARK SERIAL NO. 79/157,864

A.G. Professional Hair Care Products Ltd.,)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91225690
)	
Aderans Company Ltd.,)	
)	
Applicant.)	
)	
)	

ANSWER TO NOTICE OF OPPOSITION

Aderans Company Ltd., (“Aderans”) by and through its counsel, hereby answers the Notice of Opposition of A.G. Professional Hair Care Products Ltd., (“Professional”) dated January 6, 2016, as follows. Each of the following paragraphs in the answer correspond to the paragraph numbers in the Notice of Opposition.

1. Aderans is without 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 on that basis, denies the allegations therein.

2. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition, and on that basis, denies the allegations therein.

3. Aderans is without 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, and on that basis, denies the allegations therein.

4. Aderans is without 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, and on that basis, denies the allegations therein.

5. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition, and on that basis, denies the allegations therein.

6. Aderans admits the allegations in paragraph 6 to the extent that the information is consistent with the Trademark Office data concerning the registrations, and otherwise denies the remaining allegations of the paragraph.

7. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition, and on that basis, denies the allegations therein.

8. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition, and on that basis, denies the allegations therein.

9. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition, and on that basis, denies the allegations therein.

10. Aderans is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Notice of Opposition, and on that basis, denies the allegations therein.

11. Aderans admits the allegations in paragraph 11 to the extent that the information is consistent with the Trademark Office data concerning prosecution, and otherwise denies the remaining allegations of the paragraph.

12. Aderans denies the allegations of paragraph 12.

13. Aderans admits the allegations in paragraph 13 to the extent that the information is consistent with the Trademark Office data concerning the application, and otherwise denies the remaining allegations of the paragraph.

14. Aderans denies the allegations of paragraph 14.

15. Aderans denies the allegations of paragraph 15.

16. Aderans denies the allegations of paragraph 16.

17. Aderans denies the allegations of paragraph 17 as noted above.

18. Aderans denies the allegations of paragraph 18.

19. Aderans denies the allegations of paragraph 19.

20. Aderans denies the allegations of paragraph 20.

21. Aderans denies the allegations of paragraph 21 as noted above.

22. Aderans denies the allegations of paragraph 22.

23. Aderans denies the allegations of paragraph 23.

24. Aderans denies the allegations of paragraph 24.

With regard to the prayer for relief, Aderans denies that Professional is entitled to the relief requested. Aderans denies each of the allegations in the prayer for relief.

AFFIRMATIVE DEFENSES

Aderans asserts that the following defenses are at issue or will be at issue after an opportunity to conduct discovery:

First Affirmative Defense – No Likelihood of Confusion

1. Professional’s claim is barred since there is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant’s DIAMOND LOGO design mark and Opposer’s pleaded marks are not confusingly similar.

2. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant’s DIAMOND LOGO design mark and Opposer’s pleaded marks differ in sight, sound, connotation, and meaning.

3. There is no likelihood of confusion, mistake, or deception because, *inter alia*, of the dissimilarity of intended or established, likely-to-continue trade channels of Applicant’s DIAMOND LOGO design mark and Opposer’s pleaded marks in that the goods and services associated with Opposer’s pleaded marks are available across North America in professional salons exclusively. The products are not available in drug stores and grocery chains.

4. There is no likelihood of confusion, mistake, or deception because, *inter alia*, of the conditions under which buyers to whom sales are made or will be made of goods and services comprising Applicant’s DIAMOND LOGO design mark and Opposer’s pleaded marks, that is, impulse versus, careful, sophisticated purchasing. Here, customers purchasing products and encountering products in the field of haircare, wigs, artificial hair products, and the like, are very interested in their appearance, therefore, they readily recognize the difference between the goods and services offered in connection with Applicant’s design mark and Opposer’s pleaded

marks, thereby decreasing any likelihood of consumer confusion, and such purchases are likely to be made in the parties respective trade channels, which are significantly different.

5. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Opposer's mark is weak because a considerable number of third parties use similar marks including the initials AG in connection with International Classes 3 and 5, the same categories as Opposer, and such third party evidence is relevant to show that AG mark is weak and weak marks merit less protection in a likelihood of confusion analysis. For example, third party marks include U.S. Ser. No. 86789516 for AG ARGENTTA, U.S. Reg. No. 3501225 for AG, U.S. Reg. No. 4141059 for AGHG, and International Reg. 1062526 for AG, all in International Class 3; U.S. Ser. No. 86809727 for AG, U.S. Ser. No. 85669669 for AQUACEL AG, U.S. Reg. No. 2947631 for AG, U.S. Reg. No. 2837287 for AQUACEL AG, and International Reg. 912718 for AG, all in International Class 5; and U.S. Reg. No. 4085968 for AGEXPERT in International Classes 3 and 5. Also, a large number of state registrations, common law trademarks, company names, and domain names use the mark AG in connection with hair care products and services, including AG for tanning registered in Arizona, Reg. No. 54579, AG CUTS 2 GO for barbershop/haircuts registered in Arizona, Reg. No. 551992, AG for cosmetic dermatology, registered in Massachusetts, Reg. No. 70554, and TRICHEMA AG for shampoo, conditioner, spritz, and gel registered in California, Reg. No. 112632; AG HAIR SALON in Florida, www.aghairsalon.com, AG HAIR DESIGN in Texas, www.aghairdesign.com, AG BEAUTY SERVICES in New York, www.agbeautyservices.com, and AG HAIR BRAIDING in Washington, AG BEAUTY SALON in California, among several others . The weaker an opposer's mark as here, the closer an applicant's mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.

Second Affirmative Defense – No Dilution

6. Professional's claim based upon dilution is barred since its pleaded marks are not famous.

7. Opposer's claim based upon dilution is barred since the pleaded marks are not distinctive or have not acquired distinctiveness.

8. Opposer's claim based upon dilution is barred because the registration of Applicant's mark complained of is not likely to result in blurring or tarnishment of Opposer's pleaded marks.

Third Affirmative Defense –Failure to State a Claim for Relief

9. Opposer has failed to state a claim for relief.

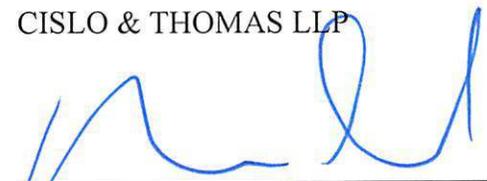
10. And, such other affirmative defenses as may be revealed in the course of discovery.

WHEREFORE, Applicant prays for an Order:

- (a) Dismissing the Opposition with prejudice and permitting registration of Applicant's trademark; and
- (b) Granting Applicant the benefit of such other and further relief as is deemed just and proper.

Respectfully submitted,

CISLO & THOMAS LLP



Dated: March 16, 2016

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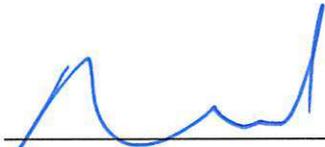
Fax: (310) 394-4477

Attorneys for Applicant
Aderans Company Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE TO NOTICE OF OPPOSITION was served upon the attorney for A.G. Professional Hair Care Products Ltd., by first class mail, postage prepaid, to Ludomir A. Budzyn, Esq., Hoffman & Baron, LLP, 6 Campus Drive, Parsippany, NJ 07054, with a copy by electronic mail to lbudzyn@hbiplaw.com and LABDocket@hbiplaw.com, on the date given below.

Dated: March 16, 2016



Daniel M. Cislo, Esq.
Kristin B. Kosinski, Esq.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below.

Dated: March 16, 2016



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