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Filing date: **03/30/2016**

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

Proceeding	91226940
Party	Defendant Danxiao Information Technology Limited
Correspondence Address	DANXIAO INFORMATION TECHNOLOGY LIMITED 3RD EAST RD, HEMC, PANYU, RM A438, BLDG 13 GUANGZHOU, 510006 CHINA dan@hytto.com
Submission	Answer
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Date	03/30/2016
Attachments	AnsOpp_151120T.pdf(135754 bytes )

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

<b>Cosmetic Warriors Limited,</b>	:	Opposition No. 91226940
	:	
	:	<b>NOTICE OF OPPOSITION</b>
	:	
Opposer,	:	Application Serial No. 86/768,273
	:	
v.	:	Filed: September 25, 2015
	:	
<b>Danxiao Information Technology Limited,</b>	:	Published: February 16, 2016
	:	
	:	Mark: LUSH
Applicant.	:	in International Class 10

**ANSWER AND GROUNDS OF DEFENSE**

Applicant, Danxiao Information Technology Limited (hereinafter the “Applicant”), by its attorney, Gloria M. Steinberg, Esq., files its Answer and Grounds of Defense to the Notice of Opposition and in response to Opposer’s allegations states as follows:

**ANSWER**

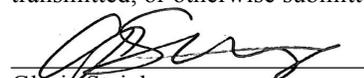
1. Applicant affirms this statement.
2. Applicant affirms this statement.
3. Applicant affirms that the Opposer is the owner of the U.S. Trademark

Registration Numbers 2,853,483; 3,001,303; 2,282,428; 3,102,767; 3,008,685; 3,987,808; 4,118,438; and 4,532,289. It is unclear, however, whether the Opposer is collectively referring to

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*CERTIFICATE OF ESTTA TRANSMISSION*

I hereby certify that this correspondence, and all papers and things referred to herein as being attached, enclosed, transmitted, or otherwise submitted, are being deposited via ESTTA, on the date set forth below:

  
\_\_\_\_\_  
Gloria Steinberg

Date: March 30, 2016

its marks as “Opposer’s LUSH Mark” or a specific mark, and therefore denies that Opposer uses “Opposer’s LUSH Mark” in connection with a wide range of goods and services.

4. Applicant affirms that Opposer’s registrations listed in Paragraph 3 of the Notice of Opposition are valid. Applicant affirms that Opposer has filed for Incontestability under Section 15 for U.S. Trademark Registration Numbers 2,853,483; 2,282,428; 3,001,303; 3,008,685; and 3,102,767.

5. Applicant is without knowledge to confirm or deny this statement.

6. Applicant is without knowledge to confirm or deny this statement.

7. Applicant is without knowledge to confirm or deny this statement.

8. Applicant is without knowledge to confirm or deny this statement.

9. Applicant is without knowledge to confirm or deny this statement.

10. Applicant is without knowledge to confirm or deny this statement.

11. Applicant is without knowledge to confirm or deny this statement.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Notice of Opposition and therefore denies the same.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and therefore denies the same.

14. Applicant affirms that LUSH (hereinafter the “Applicant’s Mark”) is for adult sexual stimulation aids, namely, artificial penises, artificial vaginas; adult sexual stimulation kit comprised primarily of adult sexual stimulation aids and a workbook. Applicant denies that there are no restrictions as to the channels of trade and promotion through which Applicant’s products

and services are offered and sold. Applicant's products and services are not offered and sold in the same channel of trade as Opposer's goods and services. In this regard, Applicant also denies that Applicant's products are assumed to occupy all ordinary channels of trade and promotion for such goods and services. Applicant denies that that Applicant's goods and services are related to those of the Opposer.

15. Applicant affirms that Applicant's Mark is identical to Opposer's LUSH word mark in appearance and sound only. Applicant denies that Applicant's Mark is similar or identical to Opposer's LUSH word mark in meaning and commercial impression. Applicant denies that Applicant's stated goods and services are closely related to Opposer's goods and services. There is no connection between Opposer and Applicant.

16. Applicant denies this statement. Applicant's goods and services (i.e., adult sexual stimulation aids and kits) are completely unrelated to Opposer's goods and services (i.e., cosmetics, toiletries, retail cosmetics store, catalogues for cosmetics, publications, salons). It is highly unlikely that consumers and potential consumers would believe that Applicant's goods and services originate from Opposer. Therefore, there is no likelihood of confusion in the marketplace and Opposer would not be damaged.

17. Applicant denies this statement because there is no likelihood of confusion and Opposer would not be damaged.

18. Applicant denies this statement because there is no likelihood of confusion and Opposer would not be damaged.

19. Applicant denies this statement.

20. Applicant affirms that it would obtain at least a *prima facie* exclusive right to use its LUSH mark if it is granted registration of the mark. Applicant denies that such registration

would be a source of damage and injury to Opposer. Applicant affirms that such registration could bar Opposer from obtaining future registrations relating to its LUSH Mark for adult sexual stimulation aids and kits and related goods. Applicant denies that such registration would bar Opposer from obtaining any future registrations relating to its LUSH Mark.

### CONCLUSION

21. WHEREFORE, Applicant respectfully requests that Opposer's claim of opposition be denied with prejudice and that the Applicant's Mark be allowed to proceed to registration. This answer has been filed through ETAS and a copy mailed to Opposer's Attorney.



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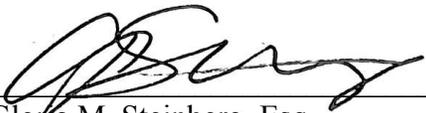
Dated: March 30, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer has been served on March 30, 2016, via First Class Mail, postage prepaid, and via fax to Opposer's Attorneys:

John A. Clifford  
Heather J. Kliebenstein  
Merchant & Gould P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-0910  
Fax: 612-332-9081

Dated: March 30, 2016

  
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Gloria M. Steinberg, Esq.  
Attorney for Applicant