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

Proceeding	91228396
Party	Defendant Marina Vape, LLC
Correspondence Address	STEPHEN MCARTHUR THE MCARTHUR LAW FIRM 11400 W OLYMPIC BLVD, SUITE 200 LOS ANGELES, CA 90064 UNITED STATES stephen@smcarthurlaw.com;trademarks@canopyparalegal.com
Submission	Answer
Filer's Name	Stephen McArthur
Filer's e-mail	stephen@smcarthurlaw.com
Signature	/Stephen McArthur/
Date	10/02/2016
Attachments	Answer to Dewwy Amended Opposition 10-2-2016.pdf(216768 bytes)

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

JAZZY BOBA, LLC AND)	<i>In re</i> Serial No. 86/761.918
VAPEXLOSION, LLC,)	Mark: Dewwy Boba
)	Published: May 17, 2016
)	
Opposers,)	
)	
v.)	
)	Opposition No.: 91228396
MARINA VAPE, LLC,)	
)	
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant DNA Vapor LLC (“Applicant”), by and through its undersigned counsel, hereby responds to the numbered grounds for opposition set forth in Jazzy Boba, LLC and Vapexplosion, LLC (collectively hereinafter, “Opposers”) Notice for Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies those allegations. Applicant understands that a Mr. Brian Nashick (“Mr. Nashick”) has stolen the Dewwy Boba product from Applicant and is now selling it under various business names, which may or may not be Opposer’s business names, but cannot verify under which business names Mr. Nashick is actually conducting business.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies those allegations

3. Applicant denies the allegations of paragraph 3, but admits that it entered into a business relationship with Mr. Brian Nashick in or about December 2014, but denies that it was a manufacturing contract.
4. Applicant admits the allegations of paragraph 4.
5. Applicant denies the allegations of paragraph 5.
6. Applicant denies the allegations of paragraph 6. Applicant, not Opposer, created Dewwy Boba.
7. Applicant denies the allegations of paragraph 7. Applicant, not Opposer, was the first to sell Dewwy Boba in commerce.
8. Applicant denies the allegations of paragraph 8.
9. Applicant denies the allegations of paragraph 9.
10. Applicant makes no answer to the allegations in paragraph 10 to the extent that those allegations state legal conclusions rather than facts. Applicant denies the factual allegations in paragraph 10.
11. Applicant admits the allegations of paragraph 11.
12. Applicant denies the allegations of paragraph 12. Applicant has proof that it was the first to create, name, and sell Dewwy Boba.
13. Applicant makes no answer to the allegations in paragraph 10 to the extent that those allegations state legal conclusions rather than facts. Applicant denies the factual allegations in paragraph 13.
14. Applicant makes no answer to the allegations in paragraph 10 to the extent that those allegations state legal conclusions rather than facts. Applicant denies the factual allegations in paragraph 14.

AFFIRMATIVE DEFENSES

Applicant hereby asserts that the following affirmative defenses bar Opposer's requested relief in its Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE: PRIOR USE / FIRST USE

Applicant created the Dewwy Boba product in July 2014. Applicant has proof that it, and not Mr. Nashick or any of his entities, created the product in July 2014. Mr. Brian Nashick was not involved in the creation of Dewwy Boba. Applicant first sold the product in August 2014. Applicant has proof that it was the first to sell the product. The product was sold by Applicant and under the "Marina Vape LLC" business name. Neither Mr. Nashick nor Opposer's names were connected with the first use or first sale of Dewwy Boba.

Applicant hereby gives notice that it may rely on any affirmative defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant as it deems just.

Respectfully Submitted,

October 2, 2016

_____*Stephen McArthur*_____

Stephen Charles McArthur
THE MCARTHUR LAW FIRM, PC
1400 W. Olympic Blvd., Suite 200
Los Angeles, CA 90064
Tel. (323) 639-4455
stephen@smcarthurlaw.com

Attorney for Applicant,
MARINA VAPE, LLC

PROOF OF SERVICE

I hereby certify that on 10/2/2016 a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was service by first class mail postage prepaid to Applicant's attorney of record:

Alexander Merino
Merino Yebri, LLP
1925 Century Park East, Suite 2140
Los Angeles, CA 90067

_____*Stephen McArthur*_____

Stephen Charles McArthur
THE MCARTHUR LAW FIRM, PC
1400 W. Olympic Blvd., Suite 200
Los Angeles, CA 90064
Tel. (323) 639-4455
stephen@smcarthurlaw.com