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

Proceeding	91175114
Party	Defendant Zoom Eyeworks, Inc. Zoom Eyeworks, Inc. 2501 9th Street, Suite 100 Berkeley, CA 94710 kkalan@bw-legal.com
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Date	02/21/2007
Attachments	Answer.pdf (5 pages)(35124 bytes)

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

Dioptics Medical Products, Inc.,)	
)	
Opposer,)	Opposition No. 91175114
)	Mark: SUNSHADES
vs.)	
)	Serial No. 78/876,313
Zoom Eyeworks, Inc.,)	Published: May 4, 2006
)	
Applicant.)	

APPLICANT’S ANSWER TO OPPOSER’S NOTICE OF OPPOSITION

Applicant, Zoom Eyeworks, Inc. (hereinafter “Applicant”), by and through its attorneys, Berenbaum, Weinshienk & Eason, P.C., and pursuant to the Board’s Order dated January 13, 2007, hereby submits this Answer to the Notice of Opposition filed by Dioptics, Inc. (hereinafter “Opposer”). In response to Opposer’s Notice of Opposition, Applicant states as follows:

With respect to the unnumbered introductory paragraph of the Opposition, Applicant denies that Opposer is or will be damaged by the registration of Applicant’s mark SUNSHADES and denies that Opposer has stated grounds for its opposition.

With respect to the numbered paragraphs of the Notice of Opposition, Applicant states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies the allegations of Paragraph 1.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the Notice of Opposition and, therefore, denies the allegations of Paragraph 2.

3. Applicant denies the allegations of Paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 4 of the Notice of Opposition and, therefore, denies the allegations of Paragraph 4.

5. Applicant filed its SUNSHADES mark on May 4, 2006, and said mark was published in the *Official Gazette* on November 14, 2006. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of the allegations set forth in Paragraph 5 of the Notice of Opposition and, therefore, denies the allegations of Paragraph 5.

6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

13. Applicant denies all allegations of the Notice of Opposition not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief can be granted.
2. Opposer's claims are barred or diminished by operation of the doctrine of laches.
3. Opposer's claims are barred or diminished by Opposer's knowledge, notice, or investigation.
4. Opposer's claims are barred or diminished by estoppel.
5. Opposer does not have any trademark rights to the mark "SUNSHADES".
6. Opposer's alleged rights in the marks listed in its Notice of Opposition do not extend to Applicant's mark as used in connection with Applicant's goods.
7. There is no likelihood of confusion between Applicant's mark as used in connection with Applicant's goods and Opposer's alleged marks as used in connection with Opposer's goods.
8. On information and belief, there are numerous third-party uses of the terms "SOLARSHIELD" and "SOLAR"- and "SHIELD"-formative terms in connection with products similar to Opposer's, including marks predating Opposer's alleged marks.
9. On information and belief, consumers distinguish Applicant's mark from Opposer's alleged marks, as consumers already distinguish between the numerous marks incorporating various "SUN" and "SOLAR" components within the field of eyewear and eyewear accessories.
10. Applicant reserves the right to assert additional affirmative defenses as they

become apparent in the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, Applicant requests judgment dismissing Opposer's Notice of Opposition and this proceeding in its entirety.

Respectfully submitted this 21st day of February, 2007.

BERENBAUM, WEINSHIENK & EASON, P.C.

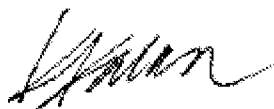


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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2007, a true and correct copy of the above and foregoing APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION was deposited with the United States Postal Service, pre-paid and properly addressed to:

David S. Bloch, Jennifer A. Golinveaux
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, CA 94111-5894

A handwritten signature in black ink, appearing to read "Winston & Strawn", is written above a horizontal line.