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

Proceeding	91179171
Party	Defendant Coty Deutschland GmbH
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Date	10/29/2007
Attachments	Answer to Opposition - TRULY PINK.pdf (5 pages)(137362 bytes)

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

LUSTER PROUDCTS, INC.,	:	
Opposer,	:	
v.	:	**Opposition No. 91179171**
COTY DEUTSCHLAND GMBH,	:	
Applicant.	:	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, COTY DEUTSCHLAND GMBH ("Applicant"), owner of United States Trademark Application Serial No. 78/943,988 for "TRULY PINK" in International Class 3 for its ANSWER AND AFFIRMATIVE DEFENSES to the Notice of Opposition of Opposer, LUSTER PRODUCTS, INC. ("Opposer"), alleges and responds as follows:

FIRST DEFENSE
(Response to Numbered Paragraphs)

Applicant denies each and every allegation contained in Opposer's Notice of Opposition, including its prayers for relief, except those that have been expressly admitted herein. Applicant further responds to the specific allegations in Opposer's Notice of Opposition, in accordance with the order and number of the paragraphs in which they are set out, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Notice of Opposition and, on that basis, denies those allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Notice of Opposition and, on that basis, denies those allegations.

3. Applicant denies each and every allegation contained in Paragraph 3 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 contained in Paragraph 4 of the Notice of Opposition related to the ownership or status of the registrations listed therein and, on that basis, denies those allegations. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 4 of the Notice of Opposition and, on that basis, denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Notice of Opposition related to the status of the registrations listed therein and, on that basis, denies those allegations. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 5 of the Notice of Opposition and, on that basis, denies those allegations.

6. Applicant denies each and every allegation contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Notice of Opposition and, on that basis, denies those allegations.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Notice of Opposition and, on that basis, denies those allegations.

9. Applicant denies each and every allegation contained in Paragraph 9 of the Notice of Opposition.

10. Applicant admits that it was aware of the existence of registrations of Opposer for the mark "PINK" at the time Applicant filed its Application Serial No. 78/943,988 for "TRULY PINK".

11. Applicant admits that it is using the trademark "TRULY PINK" and that it seeks registration of such mark. Applicant further admits that its Application Serial No. 78/943,988 for "TRULY PINK" ("Applicant's Application") and the Notice of Opposition are the best evidence of their respective contents; Applicant therefore denies all allegations inconsistent with the contents of Applicant's Application and the Notice of Opposition. Applicant specifically denies that Opposer's consent or permission is required for Applicant's use or registration of Applicant's "TRULY PINK" trademark.

12. Applicant denies each and every allegation contained in Paragraph 12 of the Notice of Opposition.

13. Applicant admits that the filing date for Applicant's Application is August 3, 2006. Applicant denies the remaining allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies each and every allegation contained in Paragraph 14 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

SECOND DEFENSE

15. Opposer's PINK trademark is inherently weak and therefore afforded narrow, if any, protection. Due to the weak and diluted nature of PINK in International Class 3, Opposer is not entitled the exclusive right to use the term "PINK". Indeed, Opposer's Registration of "PINK" on the Supplemental Registration under Registration No. 1,511,336 and its own disclaimer of the exclusive right to use "PINK" in Opposer's Registration No. 1503517 for PINK PROTECTION is dispositive of Opposer's lack of exclusive rights in the term "PINK".

THIRD DEFENSE

16. Upon information and belief, PINK is highly diluted insofar as it is registered and used in many variations by many parties for International Class 3 goods. The ubiquity of the term PINK in International Class 3 suggests that PINK marks may naturally coexist and are not deemed confusingly similar by consumers. Moreover,

Applicant's disclaimer of the exclusive rights to "PINK" in its application along with the disclaimer of "PINK" in nearly every other registration and application comprising the term "PINK" in class 3 reflects the limited protection afforded to "PINK" on its own.

FOURTH DEFENSE

17. Applicant's TRULY PINK is wholly different in sight, sound, meaning and overall commercial impression from Opposer's marks.

FIFTH DEFENSE

18. Applicant's perfumery, cosmetics and skin and body preparations are distinct and dissimilar to the hair care products designated in Opposer's filings. Consequently, the parties' respective products are geared to a wholly different set of sophisticated and discerning consumers.

RESERVATION OF AFFIRMATIVE DEFENSES

19. Applicant reserves the right to amend its answer to assert additional affirmative defenses when it determines the particulars of Opposer's allegations that are not apparent on the face of the Notice of Opposition.

Dated: October 29, 2007

Respectfully submitted,

COTY DEUTSCHLAND GMBH

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was mailed on October 29, 2007, by Federal Express, postage prepaid, in an envelope addressed to: Burton S. Ehrlich, Ladas & Parry, 224 South Michigan Avenue, Suite 1600, Chicago, IL, 60604.

Fernanda Magalhaes.

Fernanda Magalhaes
Senior Trademark Paralegal