

ESTTA Tracking number: **ESTTA165184**

Filing date: **09/26/2007**

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

Proceeding	91179273
Party	Defendant Hyde, Allen L.
Correspondence Address	KARLA C. SHIPPEY LAW OFFICES OF KARLA SHIPPEY 4848 LAKEVIEW AVE STE B YORBA LINDA, CA 92886-3452 kshippey@lawwords.com
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Date	09/26/2007
Attachments	Opposition Answer Belly Jeans.pdf (5 pages)(44973 bytes)

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

In the Matter of:

MARK: BELLY JEANS Stylized
Serial No.: 77102551
Filed: February 8, 2007
Published: August 7, 2007

JELLY BELLY CANDY COMPANY)	
)	Opposition No. 91179273
Opposer,)	
v.)	
)	
ALLEN L. HYDE)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, ALLEN L. HYDE, an individual, located at 1526 San Alto Avenue, Orange, CA 92865 (hereinafter "Applicant"), by its attorneys, answers the Notice of Opposition of JELLY BELLY CANDY COMPANY (hereinafter "Opposer") as follows:

COUNT I – LIKELIHOOD OF CONFUSION

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1, and therefore denies each and every allegation in paragraph 1.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegation in paragraph 2, and therefore denies the allegation in paragraph 2.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegation in paragraph 3, and therefore denies the allegation in paragraph 3.

4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4, and therefore denies each and every allegation in paragraph 4.
5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5, and therefore denies each and every allegation in paragraph 5.
6. Applicant admits that Opposer owns the identified registrations.
7. Applicant admits that it filed the identified application.
8. Applicant admits the allegations in paragraph 8.
9. Applicant admits the allegations in paragraph 9.
10. Applicant admits the allegation in paragraph 10.
11. Applicant denies the allegation in paragraph 11.
12. Applicant denies the allegation in paragraph 12.
13. Applicant denies the allegation in paragraph 13.
14. Applicant denies the allegation in paragraph 14.
15. Applicant lacks sufficient knowledge or information to form a belief as to whether its trade channels and/or customers will be similar to those of Opposer, and therefore denies each and every allegation in paragraph 15.
16. Applicant denies each and every allegation in paragraph 16.
17. Applicant denies each and every allegation in paragraph 17.
18. Applicant admits that it would obtain at least a prima facie exclusive right to use the BELLY JEANS Stylized mark if granted registration based on Application No. 77/102,551, but Applicant denies that such registration would be a source of damage and injury to Opposer and its customers.

COUNT II – DILUTION

19. Applicant repeats and incorporates herein the responses set forth in Paragraphs 1 through 18 herein.
20. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20, and therefore denies each and every allegation in paragraph 20.
21. Applicant denies the allegation in paragraph 21.
22. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegation in paragraph 22, and therefore denies the allegation in paragraph 22.
23. Applicant denies each and every allegation in paragraph 23.
24. Applicant denies the allegation in paragraph 24.
25. Applicant denies the allegation in paragraph 25.

COUNT III – FRAUD

26. Applicant denies each and every allegation in paragraph 26.
27. Applicant denies each and every allegation in paragraph 27.
28. Applicant denies each and every allegation in paragraph 28.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

- A. Applicant's mark is BELLY JEANS Stylized, while Opposer's mark is JELLY BELLY Stylized , and Applicant's mark is visually and aurally distinctive from any mark that Opposer is using. The visual and aural dissimilarity of the marks dispels any likelihood of confusion.

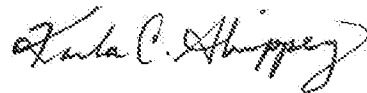
SECOND AFFIRMATIVE DEFENSE

B. The consumer commercial impression associated with Applicant's mark BELLY JEANS Stylized, which impression is emphasized by Applicant's packaging using blue jeans, is completely distinct from that associated with Opposer's mark JELLY BELLY Stylized, which mark contains part of the generic name for Opposer's jelly bean products. It is noted that exclusive use of "jelly" is disclaimed by Opposer in its registrations. The distinctive consumer commercial impression of Applicant's mark as compared with Opposer's mark obviates likelihood of confusion when these marks are used simultaneously in commerce.

WHEREFORE, Applicant requests that the United States Patent and Trademark Office deny and dismiss with prejudice Opposer's Notice of Opposition.

September 26, 2007

Respectfully submitted,



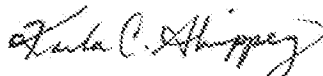
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CERTIFICATE OF TRANSMISSION

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES is being transmitted electronically by ESTTA to the Patent and Trademark Office on September 26, 2007.

Dated: September 26, 2007



Karla C. Shippey

Opposition No.91179273

Serial No. 77102551

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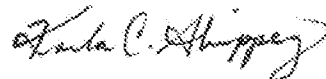
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Applicant.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES has been served on Jelly Belly Candy Company, Opposer, by mailing said copy on September 26, 2007, via First Class Mail, postage prepaid, certified with return receipt to:

Nicolas S. Gold
Law Offices of James R. Cypher
405 14th Street, Suite 1607
Oakland, California 94612

Dated: September 26, 2007



Karla C. Shippey