

TTAB

**HALBERSTADT CURLEY**  
ATTORNEYS AT LAW*Via facsimile and regular mail*

December 15, 2008

Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451**Re: Mignon Fogarty, Inc. and MacMillan Holdings, LLC v. Joel Avery  
Opposition No. 91185105**

Dear Sir/Madam:

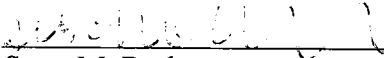
Enclosed please find an original and one copy of Applicant's Answer to Notice of Opposition in the above referenced matter. Please file the original of record and return a time stamped copy to the undersigned in the envelope provided.

I apologize for not filing this with your office sooner. It was accidentally mailed to the wrong address at 2900 Crystal Drive, Arlington, VA 22202-3514 on December 8, 2008 and returned to our office today.

Thank you for your assistance in this matter. If you should have any questions or concerns, please feel free to call me.

Very truly yours,

HALBERSTADT CURLEY LLC

By:   
Scott M. RothmanSMR/jc  
Encl.

12-16-2008

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

IN RE: TRADEMARK APPLICATION SERIAL NO. 77277106

<p>MIGNON FOGARTY, INC. and MACMILLAM HOLDINGS, LLC</p> <p style="text-align: center;">v.</p> <p>JOEL AVERY</p> <p style="text-align: right;">Opposers,  Applicant.</p>	<p>Opposition No. 91185105</p>
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**ANSWER AND AFFIRMATIVE DEFENSES  
TO NOTICE OF OPPOSITION**

Trademark Applicant, Joel Avery, by and through his undersigned counsel, hereby appears and answers the above-captioned Notice of Opposition, and avers as follows:

ANSWER

1. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.
2. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.
3. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.
4. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.
5. Denied. It is denied that Applicant's mark is confusingly similar. Strict proof in support of same is demanded at trial.

6. Denied. The averment stating that MFI is the owner of said trademark is a conclusion of law to which no response is required. Applicant is without sufficient knowledge to admit or deny the averment stating that said alleged mark has been continually used in commerce since July 2006. Strict proof in support of same is demanded at trial.

7. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

8. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

9. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

10. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof is demanded at trial.

11. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

12. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

13. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

14. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

15. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

16. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

17. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

18. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

19. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

20. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

21. Admitted in part; denied in part. It is admitted that Applicant filed the referenced application on or about the referenced date to register the referenced mark in connection with the referenced goods. Applicant is without sufficient information to admit or deny whether the Opposers' alleged mark had become "well known" as of the referenced date. Strict proof in support of same is demanded at trial.

22. Admitted.

23. Admitted in part; denied in part. It is admitted that Applicant has refused to withdraw his application. It is denied that Opposers have established the existence of any confusion.

24. Denied. Applicant is without sufficient knowledge to admit or deny the corresponding averment. Strict proof in support of same is demanded at trial.

25. Denied. The corresponding averment is a conclusion of law to which no response is required.

26. Denied. The corresponding averment is a conclusion of law to which no response is required.

27. Denied. The corresponding averment is a conclusion of law to which no response is required.

28. Admitted in part; denied in part. It is admitted that the intent-to-use application proposes to use Applicant's mark in connection with the referenced class. Applicant is without sufficient information to admit or deny the remaining averments. Strict proof in support of same is demanded at trial.

29. Denied. The corresponding averment is a conclusion of law to which no response is required.

30. Denied. The corresponding averment is a conclusion of law to which no response is required.

31. Denied. The corresponding averment is a conclusion of law to which no response is required.

WHEREFORE, Applicant herein, Joel Avery, requests judgment in his favor and against Opposers herein, Mignon Fogarty, Inc. and Macmillan Holdings, LLC, and an Order permitting the registration of the mark filed at application Serial No. 77277106, along with such other relief as the Trademark Trial Appeal Board may deem appropriate.

AFFIRMATIVE DEFENSES

32. There exists no probability of confusion between Applicant's mark and Opposers' alleged mark.

33. Applicant's mark was registered in conjunction with a series of related marks, including "The Grammar Crew." Applicant's mark is intended to be used solely in connection with "The Grammar Crew" registered mark and related registered marks owned by Applicant, thereby dispelling any probability of confusion with Opposers' alleged mark.

34. In view of Applicant's related registered marks, and Opposers' failure to object to same, Opposers' cannot sustain any further injury from the registration of the mark at issue, assuming *arguendo* any injury can be established.

35. Applicant's proposed use of its mark will not overlap with the scope of Opposers' use of its alleged mark as of September 11, 2007.

36. Applicant's proposed channels of distribution of goods and services bearing its mark will not overlap with the channels used by Opposers as of September 11, 2007.

37. Multiple third parties have used the mark "Grammar Girl."

38. Opposers' alleged mark did acquire the requisite distinctiveness on or before September 11, 2007.

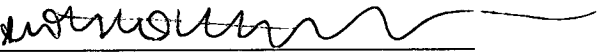
39. Upon information and belief, Opposers did not assert ownership rights in the alleged mark "Grammar Girl" as of September 11, 2007.

WHEREFORE, Applicant herein, Joel Avery, requests judgment in his favor and against Opposers herein, Mignon Fogarty, Inc. and Macmillan Holdings, LLC, and an

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Respectfully submitted,

**HALBERSTADT CURLEY LLC**

By: 

Scott M. Rothman, Esquire  
1100 E. Hector Street, Suite 425  
Conshohocken, PA 19428  
610 834 8819  
610 834 8813 (fax)  
srothman@halcur.com  
*Attorney for Applicant*

Date: 12/8/08

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

IN RE: TRADEMARK APPLICATION SERIAL NO. 77277106

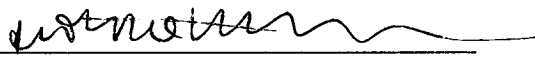
MIGNON FOGARTY, INC. and MACMILLAM HOLDINGS, LLC	
v.	Opposition No. 91185105
JOEL AVERY	
Opposers,	
Applicant.	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Notice of Opposition was sent via first-class U.S. mail, postage prepaid, to the following:

Mark Lerner, Esquire  
Satterlee Stephens Burke & Burke LLP  
230 Park Avenue  
New York, NY 10169

**HALBERSTADT CURLEY LLC**

By:   
Scott M. Rothman, Esquire  
1100 E. Hector Street, Suite 425  
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*Attorney for Applicant*

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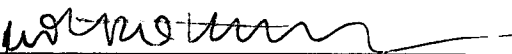
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*Attorney for Applicant*

Date: 12/15/08

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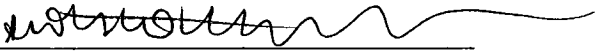
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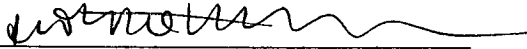
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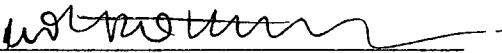
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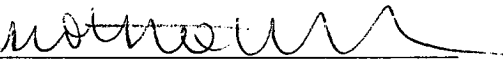
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610 834 8813 (fax)  
srothman@halcur.com  
*Attorney for Applicant*

Date: 12/15/08

Halberstadt Curley, LLC  
1100 E. Hector Street  
Suite 425  
Conshohocken, PA 19428

*SM*