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

Proceeding	91188294
Party	Defendant UKW Holding Company
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1IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In The Matter of Trademark Application No. 77/487861

EUROPEAN WAX CENTER, INC. a Florida corporation, Opposer, vs. UKW HOLDING COMPANY, a Florida corporation, Applicant.	)	Opposition No. 91188294

ANSWER & AFFIRMATIVE DEFENSES

Applicant, UKW Holding Company, (hereinafter "Applicant"), by and through its undersigned counsel, hereby answers the Notice of Opposition filed by European Wax Center, Inc. (hereinafter "Opposer") as follows:

With respect to the preliminary averment, i.e., the unnumbered paragraph of the Notice of Opposition, Applicant admits that it filed Application Serial No. 77/497,861 with the United States Patent and Trademark Office, but denies that Opposer will be damaged by the registration of this application.

1. As to Paragraph 1 of the Notice of Opposition, Applicant admits that it filed Application Serial No. 77/497,861 for the mark **THE SECRET IS OUR WAX** with the USPTO on June 12, 2008 for use in connection with personal body and facial hair removal services for men, women and children and that the claimed date of first use in the application is July 31, 2006.
2. Applicant denies the allegations of Paragraph 2 of the Notice of Opposition.

3. Applicant denies the allegations of Paragraph 3 of the Notice of Opposition. in that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. .
4. As to Paragraph 4 of the Notice of Opposition, Applicant admits that the records of the United States Patent and Trademark Office reflect that Opposer filed Application Serial No. 77/523,191 for the mark **THE SECRET IS IN THE WAX** for use in connection with beauty salon services featuring hair removal.
5. Applicant denies the allegations of the first sentence of Paragraph 5 of the Notice of Opposition in that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. Applicant denies the allegations of the second sentence of Paragraph 5 of the Notice of Opposition.
6. There is no Paragraph 6 contained in the Notice of Opposition.
7. As to the allegations of Paragraph 7 of the Notice of Opposition, Applicant admits that its mark **THE SECRET IS OUR WAX** is highly similar to the mark **THE SECRET IS IN THE WAX** but denies that Opposer has superior rights to this mark.
8. Applicant admits that its services are substantially similar to the services of Opposer as Opposer has described its services in Application Serial No. 77/487,861. Applicant is without sufficient knowledge or information to form a belief as to the actual services offered by Opposer in connection with the mark **THE SECRET IS IN THE WAX** and therefore denies the allegations of Paragraph 8 of the Notice of Opposition to the extent it refers to the services "offered by Opposer."

9. As to the allegations of Paragraph 9 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the consumers to which Opposer offers its services and therefore denies the consumers are "the same consumers."
10. Applicant admits the allegations of Paragraph 10 to the extent that it agrees that there is a likelihood of confusion between the marks **THE SECRET IS IN THE WAX** and the **SECRET IS OUR WAX** for the services each party has described in its respective application, but denies that it is Applicant's mark that is creating the likelihood of confusion..
11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition on the grounds that there will be a continued likelihood of confusion, mistake or deception caused by Applicant's registration of its mark **THE SECRET IS OUR WAX.** Rather, it is Opposer's use and attempted registration of the mark **THE SECRET IS IN THE WAX** that violates §2(d) of the Lanham Act.

AFFIRMATIVE DEFENSES

1. Opposer's hands are unclean.
2. Applicant has prior rights in and to its family of marks.
3. Opposer's claims are barred by the doctrine of laches.
4. Opposer's claims are barred by the doctrine of acquiescence.
5. Opposer's claims are barred on the grounds of estoppel.
6. Opposer's claims are barred on the grounds of waiver.
7. Opposer lacks standing to challenge Applicant's Application Serial No. 77/497,861.

8. Applicant reserves its right to supplement its Affirmative Defenses as it sees fit and necessary throughout this Opposition Proceeding.[1]

WHEREFORE, Applicant denies that Opposer is entitled to the relief requested in its Notice of Opposition and requests that the Notice of Opposition be dismissed with prejudice and the registration for the mark **THE SECRET IS OUR WAX** be issued to Applicant.

Dated: March 10, 2009

Respectfully submitted,

By: s/lnk/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on

David A. Gast
John Cyril Malloy, III
Meredith A. Frank
MALLOY & MALLOY, P.A.
2800 S.W. Third Avenue.
Miami, FL 33129

by United States FIRST CLASS U.S. MAIL, postage pre-paid this 10th day of March, 2009.

By: s/lnk/
Lisa N. Kaufman, Esq.

[1] Applicant also reserves the right to file any counterclaims which may become known to it in this proceeding or in any proceeding which may be brought in a related mater,

CERTIFICATE OF ELECTRONIC FILING USING ETTSA

I HEREBY CERTIFY that on March 10, 2009, a true and correct copy of the foregoing was filed electronically using the TTAB's ETTSA filing system.

By: s/lnk/
Lisa N. Kaufman, Esq.