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

Proceeding	91200203
Party	Defendant Mycone Dental Supply Co., Inc.
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Date	07/20/2011
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN INTERNATIONAL
INDUSTRIES,

Opposer

v.

MYCONE DENTAL SUPPLY
CO., INC.

Applicant

Opposition Nos. 91200203

and 91200204

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES

Applicant Mycone Dental Supply Co., Inc. (hereafter "Mycone" or "Applicant"), in answer to Opposer American International Industries (hereafter "AII" or "Opposer") answers as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice and therefore denies same and demands strict proof of same at trial.
2. Admitted.
3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice and therefore denies same and demands strict proof of same at trial.

4. Admitted that a trademark application accorded serial number 85289636 was filed on April 7, 2011 for the mark GEL POLISH for Nail care kits comprising nail polish; Nail care preparations; Nail enamel; Nail hardeners; Nail polish; Nail polish base coat; Nail polish remover; Nail polish top coat; Nail strengtheners; Nail varnish. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Notice and therefore denies same and demands strict proof of same at trial.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice and therefore denies same and demands strict proof of same at trial.

6. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice and therefore denies same and demands strict proof of same at trial.

7. Admitted that a trademark application accorded serial number 85289631 was filed on April 7, 2011 for the stylized mark *gel polish* for Nail care kits comprising nail polish; Nail care preparations; Nail enamel; Nail hardeners; Nail polish; Nail polish base coat; Nail polish remover; Nail polish top coat; Nail strengtheners; Nail varnish. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of the Notice and therefore denies same and demands strict proof of same at trial.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice and therefore denies same and demands strict proof of same at trial.

9. It is denied that applicant seeks to register a standard character version of the GELPOLISH mark. Applicant admits that serial numbers 85088504 and 85087694 are stylized versions of the GELPOLISH mark for use with “nail care preparations” in class 3, and that, in each application, no claim is made to the exclusive right to use “GEL POLISH” apart from the marks as shown.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice and demands strict proof of same at trial..

11. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice and therefore denies same and demands strict proof of same at trial.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice and demands strict proof of same at trial..

13. Applicant denies the allegations contained in Paragraph 13 of the Notice and demands strict proof of same at trial..

14. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Notice and therefore denies same and demands strict proof of same at trial.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses:

First Affirmative Defense

As a first, separate and distinct affirmative defense, Applicant asserts that Opposer has not been and will not be damaged by the registration of the Applicant's stylized GELPOLISH marks, which are the subject of application Serial Nos. 85088504 and 85087694.

Second Affirmative Defense

As a second, separate and distinct affirmative defense, applicant asserts that no likelihood of confusion exists between the Applicant's stylized GELPOLISH marks and any mark asserted by Opposer in the Notice.

Third Affirmative Defense

As a third, separate and distinct affirmative defense, applicant asserts that there is no likelihood of confusion because Applicant's stylized GELPOLISH marks and any mark asserted by Opposer in the Notice, in their entireties, are dissimilar in sight, appearance, connotation, or commercial impression.

Fourth Affirmative Defense

As a fourth, separate and distinct affirmative defense, applicant asserts that Opposer has no exclusive rights in and to the words GEL POLISH for use in connection with Opposer's stated goods.

Fifth Affirmative Defense

As a fifth, separate and distinct affirmative defense, applicant asserts that the geographic distance between the services offered by Applicant and Opposer renders confusion unlikely.

Sixth Affirmative Defense

As a sixth, separate and distinct affirmative defense, applicant asserts that any mark asserted by Opposer in the Notice has not acquired secondary meaning.

Seventh Affirmative Defense

As a seventh, separate and distinct affirmative defense, applicant asserts that any mark asserted by Opposer in the Notice is not inherently distinctive.

Eighth Affirmative Defense

As an eighth, separate and distinct affirmative defense, applicant asserts that Opposer does not have standing to maintain this opposition.

WHEREFORE, Applicant prays that this opposition be dismissed and Applicant's GEL POLISH applications proceed to registration.

Respectfully submitted,

**KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS LLP**

/s/Robert A. McKinley

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*Attorneys for Applicant
Mycone Dental Supply Co., Inc.*

Dated: July 20, 2011

CERTIFICATE OF SERVICE

I, Robert A. McKinley, certify that I served a true and correct copy of the foregoing Answer and Affirmative Defenses upon the opposing party or their counsel of record by the methods and on the date indicated below:

July 20, 2011
First Class Mail

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Respectfully submitted,

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