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

Proceeding	91203607
Party	Defendant Gracie Girl, LLC
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Attachments	Answer.pdf (5 pages)(26647 bytes)

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

In the Matter of Application

No. 85325727

_____)	
ACTERVIS GMBH,)	
)	
Plaintiff,)	
)	Opposition No. 91203607
v.)	
)	ANSWER
GRACIE GIRL, LLC,)	
)	
Defendant.)	
_____)	

ANSWER

Applicant, Gracie Girl, LLC (“Applicant”), for its answer to the Notice of Opposition filed by ACTERVIS GMBH (“Opposer”) against registration of Gracie Girl’s trademark HANG AWAY LINGERIE, Serial No. 85325727 filed May 20, 2011, pleads and avers as follows:

1. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1.
2. Applicant admits the allegations in paragraph 2.
3. Applicant admits the allegations in paragraph 3.
4. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 4.

5. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 5.
6. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 6.
7. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 7.
8. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 8.
9. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 9.
10. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 10.
11. Applicant is unaware of any consent or permission given by Opposer to Applicant and admits that allegation in paragraph 11. To the extent that the allegations in paragraph 11 imply an affirmative action was taken by Opposer outside of its opposition, Applicant denies the allegations.
12. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 12.
13. Applicant denies each and every allegation contained in paragraph 13.
14. Applicant denies each and every allegation contained in paragraph 14.
15. Applicant affirmatively alleges that as a result of its continuous substantial usage of its mark HANG AWAY LINGERIE since adoption, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products. Such goodwill and widespread usage has made the mark distinctive to the Applicant.
16. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded marks of Opposer are not confusingly

similar.

17. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, because Opposer cannot base any similarity between its pleaded marks of "Hangaway" and the Hangaway logo and the mark of Applicant. Any trademark or service mark rights that Opposer may have are narrowly circumscribed to the goods or services indicated and any other use would not lead to a likelihood of confusion.

18. Applicant affirmatively alleges that Applicant has been using its mark and developing consumer recognition and goodwill in its mark since late 2007 and Opposer has done nothing and is consequently barred by laches, acquiescence and estoppel from opposing Applicant's application.

19. Applicant affirmatively alleges that Opposer has stopped using the Hangaway mark for a long enough time to consider the mark abandoned.

20. Applicant affirmatively alleges that Opposer will suffer from no damages from the Applicant's use of the HANG AWAY LINGERIE mark.

21. Opposer's registration of the marks in connection with clothing racks (Serial No. 85/448575 and 85/448579) are without a basis because of Applicant's use and registration of the mark.

WHEREFORE, Applicant requests that the notice of opposition be dismissed with prejudice.

Dated April 23, 2012.

Respectfully submitted,
GRACIE GIRL, LLC

/Cameron J. Gharabiklou/
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CERTIFICATE OF SERVICE

I, CAMERON J. GHARABIKLOU certify that a true and complete copy of this Motion to Dismiss was sent today, April 23, 2012, in an envelope with adequate postage to :

Thomas J. Oppold
Larkin Hoffman Daly & Lindgren Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, MN 55431-1194



CAMERON J. GHARABIKLOU