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

Proceeding	91207983
Party	Defendant Added Extras LLC
Correspondence Address	Claudia Cantarella SALANS LLP Rockefeller Center 620 Fifth Avenue New York, NY 10020-2457 TRADEMARKS@SALANS.COM
Submission	Answer
Filer's Name	Claudia Cantarella
Filer's e-mail	ccantarella@salans.com, thicks@salans.com, bakers@salans.com, TRADEMARKS@SALANS.COM
Signature	/claudia cantarella/
Date	12/20/2012
Attachments	ANSWER - 91207983.pdf (6 pages)(480220 bytes)

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

EMANUEL UNGARO ITALIA S.r.l.,

Opposer,

v.

KVZ INTERNATIONAL LIMITED,

Applicant.

Opposition No.: 91207983

ANSWER TO NOTICE OF OPPOSITION

Applicant, KVZ INTERNATIONAL LIMITED, (by assignment from Added Extras LLC), by and through its attorneys, Salans LLP, answers the Notice of Opposition filed by Emanuel Ungaro Italia S.r.l (“Opposer”) as follows:

With regard to the first two unnumbered paragraphs, Applicant admits that it filed an application to register the mark DIVA COUTURE (the “Mark”) in Class 003 for “Adhesives for artificial nails; Adhesives for false eyelashes, hair and nails; Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; Cosmetics and make-up; False nails; Nail art stickers; Nail buffing preparations; Nail care kits comprising nail polish; Nail care preparations; Nail care preparations, namely, nail softeners; Nail cream; Nail enamel; Nail enamel removers” on December 21, 2011, that it was assigned Serial No.85/500,670; and that it was published in the *Official Gazette for Trademarks* on May 22, 2012 (the “Application”).

Applicant denies that Opposer will be damaged by the registration of the Mark, but is otherwise without knowledge or information sufficient to form a belief as to the truth of Opposer's remaining allegations concerning Opposer's state of incorporation and/or business address and, therefore, denies the same.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies those allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and, therefore, denies those allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and, therefore, denies those allegations.

4. Applicant denies the allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations contained in Paragraph 5 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Opposer fails to state a claim upon which relief can be granted.

Second Affirmative Defense

There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to Opposer's pleaded marks.

Third Affirmative Defense

Any similarity between the Mark and Opposer's alleged marks is limited to that portion of the Mark consisting of the word "DIVA," which is not distinctive.

Fourth Affirmative Defense

Opposer is barred by the equitable doctrine of unclean hands resulting from trademark bullying, which occurs when a trademark owner uses its trademark rights to harass and intimidate another business beyond what the law might reasonably be interpreted to allow. Specifically, Opposer has repeatedly opposed trademark applications for marks containing the word "DIVA" on grounds that were dubious, weak or exaggerated. By filing this opposition, Opposer is attempting to unfairly raise Applicant's cost of entry into the market and to compete. Further, Opposer is guilty of non-use of its trademark in conjunction with "bath gel" and "body lotion" and is improperly using its trademark rights in an effort to monopolize the market for such goods.

FURTHERMORE, Applicant sets forth the following in support of its position:

1. Applicant's Mark is unique and distinctive.

2. The wording in Applicant's Mark and Opposer's marks are different.
3. Applicant's Mark and Opposer's marks are different in appearance.
4. Applicant's Mark and Opposer's marks are different in spelling.
5. Applicant's Mark and Opposer's mark create different commercial impressions.
6. One of Opposer's marks contains the word "UNGARO," which is not present in Applicant's Mark.
7. Applicant's Mark contains the word "COUTURE," which is not present in any of Opposer's marks.
8. "DIVA" is used in commerce by third parties as part of numerous trademarks for cosmetics and related goods not owned by Opposer.
9. Applicant's goods and Opposer's goods are not marketed through the same channels of trade; Applicant's goods are marketed to children and Opposer's goods are marketed to adults.
10. Applicant does not sell the goods "perfume and eau de parfum," which are the enumerated goods in two of the three marks upon which Opposer relies.
11. Applicant's Mark and Opposer's marks are not likely to cause confusion, mistake, or deception to purchasers as to the source of Opposer's goods.

12. Applicant's Mark and Opposer's marks are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety; that Applicant's application be permitted to proceed to registration at an early date; and that any such further relief be granted Applicant as may be deemed reasonable and appropriate.

Date: December 20, 2012

Respectfully submitted,

SALANS LLP

By: 

Claudia Cantarella

Tanya Hicks

620 Fifth Avenue

New York, NY 10020

Tel: 212-632-5500

Fax: 212-632-5555

Attorneys for Applicant

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CERTIFICATE OF SERVICE BY FIRST-CLASS MAIL

I hereby certify that a true and correct copy of the foregoing ANSWER in the above matter, is being deposited with the United States Postal Service as First-Class mail, postage paid, in an envelope addressed to Ralph H. Cathcart, Ladas & Parry LLP, 1040 Avenue of the Americas, New York, NY 10018-3738, on this 20th day of December 2012.



Beth Akers