

ESTTA Tracking number: **ESTTA676760**

Filing date: **06/08/2015**

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

Proceeding	91221723
Party	Defendant Bare Escentuals Beauty, Inc.
Correspondence Address	ANNA CATARINA BARE ESCENTUALS BEAUTY, INC. 71 STEVENSON ST FL 22 SAN FRANCISCO, CA 94105-2979 tmdocket@bareescentuals.com
Submission	Answer
Filer's Name	Robyn S. Lederman
Filer's e-mail	rlederman@brookskushman.com, awhite@brookskushman.com, lsavage@brookskushman.com
Signature	/Robyn S. Lederman/
Date	06/08/2015
Attachments	BEB Answer.pdf(318063 bytes)

4. BEB denies that the public or the beauty and cosmetic industry has come to recognize the product offered in conjunction with the LASHTOPIA Mark as signifying Opposer and its products. BEB is without information sufficient to admit or deny the remaining allegations in Paragraph 4, and therefore denies the same.

5. BEB admits that it filed an intent-to-use application for LASHTOPIA on September 16, 2014 and avers that this application speaks for itself. BEB is without information sufficient to admit or deny the remaining allegations in Paragraph 5, and therefore denies the same.

6. BEB denies that Opposer enjoys any goodwill whatsoever in the United States as the result of its LASHTOPIA mark. BEB is without information sufficient to admit or deny the remaining allegations in Paragraph 6, and therefore denies the same.

7. Denied.

8. Denied.

COUNT ONE
LIKELIHOOD OF CONFUSION – 15 U.S.C. §1052(d)

9. Applicant repeats and realleges each and every response in Paragraph 1-8 as if fully set forth herein.

10. This Paragraph contains a legal conclusion to which no response is required. To the extent a response is required, denied.

11. BEB admits that it filed an intent-to-use application for LASHTOPIA on September 16, 2014 and avers that this application speaks for itself. BEB denies that its LASHTOPIA mark is likely to cause confusion with Opposer's mark because, on information and belief, Opposer does not use its mark in commerce in the United States. BEB is without

information sufficient to admit or deny the remaining allegations in Paragraph 11, and therefore denies the same.

12. Denied.

13. Denied.

14. Denied.

COUNT TWO
FALSE DESIGNATION OF ORIGIN

15. Applicant repeats and realleges each and every response in Paragraph 1-14 as if fully set forth herein.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts the following affirmative defenses:

20. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and, in particular, fails to state legally sufficient grounds for sustaining the Opposition.

21. There is no likelihood of confusion between the parties' respective marks because, on information and belief, Opposer does not use its mark in commerce in the United States.

22. Opposer's mark is not entitled to common law trademark protection in the U.S. because Opposer does not use its LASHTOPIA mark in commerce in the U.S.

23. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer with Opposer's authorization or approval.

24. Applicant reserves the right to assert additional affirmative defenses learned in discovery or otherwise.

WHEREFORE, Applicant respectfully requests that this Opposition Proceeding be dismissed, with prejudice, and that its registration issue forthwith.

Respectfully submitted,

By: /Robyn S. Lederman/
Robyn S. Lederman
Rebecca J. Cantor

Attorneys/Agents for Opposer

Date: June 8, 2015
(Filed electronically via USPTO ESTTA)

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CERTIFICATE OF SERVICE

I certify that I served:

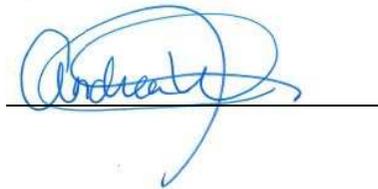
APPLICANT'S ANSWER

on June 8, 2015 by First Class Mail to:

Jacqueline P. Scheib
Alaine Doolan
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103

Courtesy copy via email to: jscheib@rc.com

Attorneys for Applicant

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Alaine Doolan".