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

Proceeding	91223986
Party	Defendant Tree Of Life Organics Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark App. Ser. No.
86/475,142 Filed: December 9, 2014
Published: May 26, 2015
Mark: TOLO ORGANICS & DESIGN

ANGEL HUNTINGTON-ORTEGA,)	
Opposer,)	
v.)	Opposition No.91223986
TREE OF LIFE ORGANICS, INC.,)	
Applicant.)	Serial No. 86475142
)	

**ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE
DEFENSES**

Applicant, Tree of Life Organics, Inc., ("Applicant" or "TOLO ORGANICS") hereby replies to the numbered grounds for opposition set forth in Opposers' Notice of Opposition as follows:

1. Applicant admits that ("Applicant") filed Application Serial No. 86/475,142 on December 09, 2014. With respect to the remaining allegations of paragraph 1, Applicant denies those allegations.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies those allegations.

3. Admitted.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and therefore denies those allegations. The Applicant has used the TOLO's mark in connection with soap products

and other products prior to Opposer file the application of their trademark.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and therefore denies those allegations.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and therefore denies those allegations.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and therefore denies those allegations. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark "TOLO ORGANICS" and the pleaded marks of Opposer "TODOS ORGANICS" are not confusingly similar. The compared marks are different in appearance, meaning, sound, or overall commercial impression.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and therefore denies those allegations.

9. Applicant further 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. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the portion "ORGANICS" which, upon information and belief, has been used and registered by numerous third parties in cosmetic businesses. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant of the "TOLO ORGANICS." 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.

10. Applicant denies that Opposer will be damaged by the registration of U.S. Serial No. 86/475,142 for the mark "TOLO ORGANICS" or that Opposer is entitled to

any relief requested in the Notice of Opposition.

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

AFFIRMATIVE DEFENSES

Applicant asserts that the following affirmative defenses bar Opposers' requested relief in its Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark of Opposer are not confusingly similar.

THIRD AFFIRMATIVE DEFENSE

Applicant has been using the Mark and developing consumer recognition and goodwill therein since at least January, 2013, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, on which inaction Applicant has relied to its detriment. Opposer's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

FURTH AFFIRMATIVE DEFENSE

Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant as it deems just.

Respectfully Submitted,

Dated: January 29, 2016

/IMRAN SHEIKH/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of January 2016, a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served in the following manner:

VIA EMAIL AT: trademark@fenwick.com

VIA FIRST CLASS MAIL

<p>R.J. Heher Attorney of Record/California Bar Member Fenwick & West LLP 801 California Street. Mountain View, CA 94041 UNITED STATES trademarks@fenwick.com Phone: 650-988-8500</p>

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 29th day of January 2016.

/IMRAN SHEIKH/

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