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

Proceeding	91228113
Party	Defendant Alicia Vaca
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Kiss My Face, LLC,

Opposer,

v.

Alicia Vaca,

Applicant.

Opposition No. 91228113  
Application Serial No. 86703172

**ANSWER TO NOTICE OF OPPOSITION**

Alicia Vaca (“Applicant”) answers the Kiss My Face, LLC (“Opposer”) Notice of Opposition as follows:

1. Applicant lacks sufficient information to admit or deny the allegations of Paragraph 1, particularly with respect to Opposer’s commercial use of the KISS MY FACE marks since 1978, and therefore neither admits nor denies the allegations of Paragraph 1.

2. Applicant lacks sufficient information to admit or deny the allegations of Paragraph 2, particularly with respect to the alleged longevity and continuity of use, fame and public recognition of the KISS MY FACE marks, and therefore neither admits nor denies the allegations of Paragraph 2.

3. Applicant admits that Opposer owns the U.S. Trademark Registration Numbers cited in Paragraph 3. Except as admitted therein, Applicant denies the remaining allegations of Paragraph 3.

4. Applicant admits that Opposer attached as Exhibit A printouts from the U.S. Patent and Trademark Office showing the status of the registrations identified in

Paragraph 3 of the Notice of Opposition. Except as admitted therein, Applicant denies the remaining allegations of Paragraph 4.

5. Applicant lacks sufficient information to admit or deny the allegations of Paragraph 5, particularly with respect to the allegation stating that “many of Opposer’s KISS MY FACE marks are the subject of incontestable registrations” pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and “serve as conclusive evidence of Opposer’s ownership of the marks and of Opposer’s exclusive rights to use the marks in commerce on or in connection with the goods/services identified in the registration[s] under Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).”

6. Applicant admits that Applicant filed U.S. Trademark Application Serial No. 86703172 on July 23, 2015 on a Section 1(b) filing basis seeking registration for Applicant’s KISS MY BUTTER trademark in conjunction with cosmetic preparations for skin care (International Class 003). Except as admitted therein, Applicant denies the remaining allegations of Paragraph 6.

7. Applicant admits that on September 25, 2015 Applicant filed an Amendment to Allege Use for the KISS MY BUTTER trademark application stating that the KISS MY BUTTER trademark was first used in commerce at least as early as December 1, 2014.

8. Applicant lacks sufficient information to admit or deny the allegations of Paragraph 8, particularly with respect to the allegation stating that Opposer’s use of Opposer’s marks commenced “long prior” to Applicant’s first use of Applicant’s trademark. Applicant further lacks sufficient information to admit or deny the allegations of Paragraph 8, particularly with respect to the allegation stating that Opposer’s KISS MY FACE marks have acquired a “high degree of recognition and distinctiveness as a symbol of the quality of goods offered by Opposer.”

9. Applicant denies the allegations of Paragraph 9.

**AFFIRMATIVE DEFENSE**

**FIRST AFFIRMATIVE DEFENSE**

10. Applicant alleges that the Notice of Opposition fails to state facts sufficient to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

11. Applicant alleges the lack of a cognizable likelihood of confusion between Applicant's trademark and Opposer's trademarks.

**THIRD AFFIRMATIVE DEFENSE**

12. Applicant alleges that the Notice of Opposition fails to state a case for cognizable damages upon which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE**

13. Applicant alleges that Opposer's damages, as alleged against Applicant in the Notice of Opposition, are speculative and cannot be ascertained with certainty.

**FIFTH AFFIRMATIVE DEFENSE**

14. Applicant denies liability for Opposer's alleged damages, as Applicant's actions are privileged and justified.

**SIXTH AFFIRMATIVE DEFENSE**

15. Applicant alleges that the Opposition is barred by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

16. Applicant alleges that the Opposer failed to mitigate alleged damages.

**EIGHT AFFIRMATIVE DEFENSE**

17. Applicant alleges that the Opposition is barred by the doctrine of acquiescence.

**NINTH AFFIRMATIVE DEFENSE**

18. Applicant alleges that the Opposition is barred by the doctrine of estoppel.

**TENTH AFFIRMATIVE DEFENSE**

19. Applicant alleges that the Opposition is barred by the doctrine of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

20. Applicant alleges that the Opposition is barred by comparative fault.

**TWELTH AFFIRMATIVE DEFENSE**

21. Applicant reserves the right to assert additional affirmative defenses as discovered.

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WHEREFORE, Applicant prays for judgment as follows:

1. That Opposer take nothing by way of the Opposition;
2. That the Opposition be dismissed in its entirety;
3. That Applicant's KISS MY BUTTER trademark registration (Registration No. 4,940,866) be reissued by the United States Trademark Office; and
4. For other and further relief as this Board may deem just and proper.

DATED: July 3, 2016

THE WINSTON BERTANI LAW GROUP

BY:



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Pamela Winston Bertani  
Attorneys for Applicant Alicia Vaca

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** has been served on CARRIE A JOHNSON, Attorney of Record, MacMillan, Sobanski & Todd, LLC, by mailing said copy on July 3, 2015, via First Class Mail, postage prepaid, to:

CARRIE A. JOHNSON  
Attorney of Record  
MacMillan, Sobanski & Todd, LLC  
One Maritime Plaza, Fifth Floor  
720 Water Street  
Toledo, Ohio 43604-1853

Signature:



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Pamela Winston Bertani

Date: July 3, 2016