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

Proceeding	91230384
Party	Defendant Nicole E. White
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Submission	Answer
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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. 86/757,101  
Mark: OPEN SEED VAULT (& Design)  
Filed: September 15, 2015  
Published in the Official Gazette on April 5, 2016  
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BASF CORPORATION,

Opposition No. 91230384

Opposer,

v.

NICOLE E. WHITE,

Applicant.  
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**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES**

Applicant, Nicole E. White (“Applicant”), by and through her attorneys, Millikin McKay PLLC, in answer to the Notice of Opposition, responds as follows:

1. In response to the preamble of BASF Corporation’s (“Opposer’s”) Notice of Opposition, Applicant admits that she filed U.S. trademark application no. 86/757,101 (the “Application”) for the mark OPEN SEED VAULT (& Design) (the “Mark”) in International Class 31 for the goods “seeds for planting” under Section 1(a) of the Lanham Act. Applicant is without information and belief to admit or deny the remaining allegations set forth in the preamble of Opposer’s Notice of Opposition regarding Opposer’s address and, therefore, the same are denied. Applicant denies the allegations in the preamble of Opposer’s Notice of Opposition regarding allegations of damages and justifications for opposing the registration

of Applicant's mark.

2. Applicant is without information and belief to admit or deny the allegations set forth in the Paragraph 1 of Opposer's Notice of Opposition and, therefore, the same are denied.

3. Paragraph 2 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 of the Opposer's Notice of Opposition and, therefore, denies the same.

4. Applicant admits the allegations of Paragraph 3 of Opposer's Notice of Opposition.

5. Applicant admits that she filed with the U.S. Patent and Trademark Office the Application to register the mark OPEN SEED VAULT (& Design), as shown in the Application, for "Seeds for planting", claiming use since at least as early as August 19, 2014 under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a). The remaining allegations of Paragraph 4 of Opposer's Notice of Opposition denied.

6. Paragraph 5 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5 and, therefore, denies the same.

7. Paragraph 6 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6 and, therefore, denies the same.

8. Paragraph 7 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 and, therefore, denies the same.

9. Paragraph 8 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 and, therefore, denies the same.

10. Paragraph 9 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

11. Paragraph 10 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

12. Paragraph 11 of the Opposer's Notice of Opposition states legal conclusions to which no response is required. To the extent that a response is required, Applicant denies the same.

### **AFFIRMATIVE DEFENSES**

Applicant undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. Applicant expressly reserves the right to plead additional affirmative and other defenses should any such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicant states as follows:

First Affirmative Defense

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

There is no likelihood of confusion, mistake, or deception between Opposer's mark and Applicant's Mark.

Third Affirmative Defense

Applicant alleges on information and belief that as a result of Opposer's own acts and/or omissions, the opposition is barred by the doctrine of laches.

Fourth Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of estoppel.

Fifth Affirmative Defense

Applicant alleges on information and belief that as a result of Opposer's own acts and omissions, Opposer has waived any right to pursue its opposition.

Sixth Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of acquiescence.

Seventh Affirmative Defense

Applicant alleges on information and belief that the opposition is barred by the doctrine of unclean hands.

Eighth Affirmative Defense

Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

Ninth Affirmative Defense

Prior to any use by Opposer, Applicant has used the mark OPEN SEED VAULT in various combinations in a manner analogous to a trademark, *inter alia*, in advertising, labeling, packaging, branding, and promotions in connection with goods that are the same or substantially identical to the goods in the opposed application, said analogous trademark use was continuous until the adoption and use of Applicant's Mark opposed by the Opposer, and Applicant is entitled to rely on such analogous use for purposes of priority.

Tenth Affirmative Defense

Prior to any use by Opposer, Applicant has used the mark OPEN SEED VAULT in various combinations as a trademark, and Applicant continues to use OPEN SEED VAULT in the form of Applicant's Mark opposed by the Opposer and OPEN SEED VAULT is used by Applicant in such a way that the continuing common element retains its impact and symbolizes a continuous commercial impression for goods which are the same or substantially identical, and Applicant is entitled to tack its earlier and continuous use of its OPEN SEED VAULT trademark onto the use of the opposed Mark for purposes of priority.

WHEREFORE, Applicant demands judgment denying the relief requested by Opposer and dismissing the Notice of Opposition.

Dated: February 4, 2019

Respectfully submitted,

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**Certificate of Service**

I hereby certify that, on February 4, 2019, a true and correct copy of the foregoing Applicant's Answer and Affirmative Defenses has been duly served by sending such copy by email to:

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