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Filing date: **01/17/2018**

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

Proceeding	91235923
Party	Defendant David J. Witchell Salon & Spa, Inc.
Correspondence Address	FRANK J BONINI JR HARDING EARLEY FOLLMER & FRAILEY PC 1288 VALLEY FORGE ROAD, 86 THE COMMONS AT VALLEY FORGE EAST PO BOX 750 VALLEY FORGE, PA 19482-0750 UNITED STATES Email: fbonini@hardingearley.com
Submission	Answer
Filer's Name	Frank J. Bonini, Jr.
Filer's email	fbonini@hardingearley.com
Signature	/Frank J. Bonini, Jr./
Date	01/17/2018
Attachments	AnswerV6FF011718.pdf(36136 bytes)

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

Signature Aesthetics, LLC)	
)	
Opposer)	Opposition No. 91235923
)	
v.)	Applicant's Mark:
)	EVERYONE WILL NOTICE
David J. Witchell Salon & Spa, Inc.,)	BUT NO ONE WILL KNOW
)	
Applicant.)	

**ANSWER TO OPPOSER SIGNATURE AESTHETICS, LLC'S
FIRST AMENDED NOTICE OF OPPOSITION**

Applicant, David J. Witchell Salon & Spa, Inc., responds to Opposer Signature Aesthetics, LLC's First Amended Notice Of Opposition ("Amended Notice"), as follows:

1. Applicant admits that on January 26, 2017, an application accorded Application No. 87/314,510 ("Opposer's Application") listing Dr. Elizabeth Whitaker as owner, was filed for a mark "EVERYONE WILL NOTICE. NO ONE WILL KNOW" listing "medical services" as the services identification, and listing a first use in commerce date as early as November 2, 2016. Applicant is without sufficient information to admit or deny the remaining allegations, and therefore they are denied. In addition, Applicant does not find Exhibit 1 attached to the Amended Notice, and therefore any reference or allegation pertaining to Exhibit 1 is denied.

2. Applicant admits that on May 2, 2017, a request for a ninety-day extension of time to oppose Applicant's Application Serial No. 87/236,339 was filed by counsel for Elizabeth Whitaker ("Whitaker" or "Dr. Whitaker"). Applicant is without sufficient information to admit or deny the remaining allegations, and therefore they are denied.

3. Applicant is without sufficient information to admit or deny the allegations in paragraph 3, and therefore they are denied. In addition, Applicant does not find Exhibit 2 attached to the Amended Notice, and therefore any reference or allegation pertaining to Exhibit 2 is denied.

4. Denied that Dr. Whitaker's filing of an assignment assigns ownership of the application. Applicant is without sufficient information to admit or deny the remaining allegations in paragraph 4, and therefore they are denied. In addition, Applicant does not find Exhibit 3 attached to the Amended Notice, and therefore any reference or allegation pertaining to Exhibit 3 is denied.

5. Applicant admits that on May 11, 2017, a document was recorded on the records of the USPTO that Opposer purports to be an assignment to Signature Aesthetics, LLC of Application Serial No. 87/314,510. Applicant is without sufficient information to admit or deny the remaining allegations in paragraph 5, and therefore they are denied.

6. Applicant denies that Opposer owns rights in a mark "EVERYONE WILL NOTICE. NO ONE WILL KNOW". Applicant admits that United States

Trademark Application Serial No. 87/314,510 for a mark “EVERYONE WILL NOTICE. NO ONE WILL KNOW” currently lists the owner of the application as Signature Aesthetics, LLC., and that Application Serial no. 87/314,510, as filed, states that the applicant of the 87/314,510 Application is using the mark and that the applicant of the 87/314,510 Application, or that applicant's related company or licensee predecessor in interest, at least as early as November 2, 2016, first used the mark “EVERYONE WILL NOTICE. NO ONE WILL KNOW” in commerce in connection with “medical services.” Applicant is without sufficient information to admit or deny the remaining allegations, and therefore they are denied.

7. Denied.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied.

12. Admitted.

13. Applicant is without sufficient information to admit or deny the allegations in paragraph 13, and therefore they are denied.

14. Paragraph 14 states a conclusion of law to which no response is required, and therefore it is denied.

15. Paragraph 15 states a conclusion of law to which no response is required, and therefore it is denied.

16. Applicant is without sufficient information to admit or deny the allegations in paragraph 16, and therefore they are denied.

17. Admitted that Applicant is entitled to have granted to Applicant a registration for the mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW, and that such a registration will entitle Applicant to a *prima facie* exclusive right of ownership in the registration and mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW for the listed services. Opposer has no rights in the purported mark “EVERYONE WILL NOTICE. NO ONE WILL KNOW”, and therefore, the remaining allegations are denied.

18. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Opposer is not the Owner of US Application Serial No. 87/314,510.

THIRD AFFIRMATIVE DEFENSE

Applicant is a prior user with the right to use Applicant’s Mark EVERYONE WILL NOTICE BUT NO ONE WILL KNOW for Applicant’s services.

FOURTH AFFIRMATIVE DEFENSE

Any alleged use by Opposer that took place prior to Applicant's filing date of Applicant's Application is insufficient to establish Opposer's priority.

FIFTH AFFIRMATIVE DEFENSE

Opposer has not acquired trademark rights in the mark EVERYONE WILL KNOW. NO ONE WILL NOTICE.

SIXTH AFFIRMATIVE DEFENSE

Although Applicant's position is that Opposer has no trademark rights in EVERYONE WILL NOTICE. NO ONE WILL KNOW, in the alternative, to the extent that Opposer is able to establish trademark rights, Opposer's rights are limited in scope.

SEVENTH AFFIRMATIVE DEFENSE

Although Applicant's position is that Opposer has no trademark rights in EVERYONE WILL NOTICE. NO ONE WILL KNOW, in the alternative, to the extent that Opposer is able to establish trademark rights, Applicant is entitled at least to a concurrent use registration. See 35 U.S.C. § 1052(d).

EIGHTH AFFIRMATIVE DEFENSE

Upon information and belief, Opposer has unclean hands and is not entitled to have a registration for the mark of Opposer's Application.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed, with prejudice.

Dated: January 17, 2018

/Frank J. Bonini, Jr./

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David J. Witchell Salon & Spa, Inc.,)	
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Applicant.)	
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO OPPOSER SIGNATURE AESTHETICS, LLC'S FIRST AMENDED NOTICE OF OPPOSITION has been served on JungJin Lee, Erin C. Bray, and Heather M. Dent by forwarding said copy on January 17, 2018 via email and first class mail to:

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Erin C. Bray, Esq.
Heather M. Dent, Esq.
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/Frank J. Bonini, Jr./

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