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Filing date: **01/15/2018**

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

| | |
|------------------------|---|
| Proceeding | 91235601 |
| Party | Defendant JHMJLL Inc. |
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| Submission | Answer |
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| Date | 01/15/2018 |
| Attachments | ANSWER and AFFIRTMATIVE DEFENSES.pdf(82458 bytes) |

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

In the Matter of Application Serial No. 86958449 and No. 87294026: NOW FIND GLUTEN FREE, each in International Class 009

| | | |
|--------------------------|---|--------------------------|
| Gluten Free Classes, LLC |) | |
| |) | |
| Opposer, |) | |
| |) | Opposition No. 91235601 |
| v. |) | Opposition No. 91237114 |
| |) | |
| JHMJLL, Inc. |) | |
| |) | Tracking No: ESTTA802382 |
| Applicant. |) | Tracking No: ESTTA851182 |

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
THE COMBINED OPPOSITIONS**

NOW COMES, Applicant, JHMJLL, INC., by and through its attorney, David M. Adler, and for its Answers and Affirmative Defenses to the Amended Notice of Opposition No. 91235601 (the “5601 Opposition”) and the Notice of Opposition No. 91237114 (the “7114 Opposition”), states as follows:

ANSWER

1. Applicant admits the allegations contained in Paragraph 1.
2. Applicant lacks sufficient knowledge to admit or deny the allegation and therefore denies the allegations in Paragraph 2.
3. Applicant lacks sufficient knowledge to admit or deny the allegation and therefore denies the allegations in Paragraph 3.
4. Applicants admits the allegations in Paragraph 4.
5. Applicant admits that the language used in this allegation properly reflects the language contained in the Application Serial No. 87/328,794.
6. Applicant admits the allegations in Paragraph 6.

7. Applicant admits attending a trade show (possibly the GLUTEN FREE AND ALLERGEN FRIENDLY EXPO in January 2016). Applicant lacks sufficient knowledge to admit or deny the remaining allegations and therefore denies the allegations in Paragraph 7.

8. Applicant admits that on March 30, 2016, Applicant filed U.S. trademark application for the mark “NOW FIND GLUTEN FREE” on the Principal Register of the USPTO, Application Serial No. 86/958,449, claiming first use at least as early as March 30, 2016 with services listed therein. Applicant admits that on January 9, 2017, Applicant filed the subject trademark application for the mark “NOW FIND GLUTEN FREE” and logo for registration on the USPTO Principal Register Application Serial No. 87/294,026. with services listed therein. Applicant lacks sufficient knowledge to admit or deny the remaining allegations and therefore denies the allegations in Paragraph 8.

9. Applicant denies the allegations in Paragraph 9 of the 7114 Opposition.

10. Applicant denies the allegations in Paragraph 9 the 5601 Opposition and the allegations in Paragraph of 10 of the 7114 Opposition.

11. Applicant admits Opposer use the trademark FIND ME GLUTEN FREE. Applicant denies the remaining allegations in Paragraph 10 of the 5601 Opposition and the allegations in Paragraph 10 of the 7114 Opposition.

11. Applicant denies the allegations in Paragraph 11 of the 5601 Opposition and the allegations in Paragraph 12 of the 7114 Opposition.

12. Applicant denies the allegations in Paragraph 12 of the 5601 Opposition and the allegations in Paragraph 13 of the 7114 Opposition.

13. Applicant denies the allegations in Paragraph 13 of the 5601 Opposition and the allegations in and Paragraph 14 of the 7114 Opposition.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses, the Applicant asserts and states as follows:

First Affirmative Defense (Unclean Hands)

14. Opposer has unclean hands in this matter because it is opposing Applicant's use of a trademark to prevent competition in the marketplace between Opposer's mobile software application and those of Applicant.
15. Opposer has unclean hands in this matter after wrongfully denying Applicant access to its tradeshow that was otherwise open to the public.
15. Opposer's unclean hands act as a bar to the relief sought by Opposer.

Second Affirmative Defense (Laches)

16. Opposer's claim is barred by the equitable principal of Laches. Opposer knew of Applicant's prior registration of the mark NOWFINDGLUTENFREE , U.S. Reg. No. 5189310 identical to the marks challenged in the combined Oppositions. Opposer has never objected Applicant's use of that mark.

Third Affirmative Defense (Estoppel)

17. Opposer's claim is barred because Opposer is estopped from denying that Applicant already owns registerable trademark rights in the phrase NOW FIND GLUTEN FREE. Opposer knows of Applicant's prior registration of the mark NOWFINDGLUTENFREE, U.S. Reg. No. 5189310 identical to the marks challenged in the combined Oppositions.

Fourth Affirmative Defense (Acquiescence)

18. Opposer's claim is barred because Opposer has acquiesced to Applicant's use of the phrase NOW FIND GLUTEN FREE. Opposer knows of Applicant's prior registration of the mark

NOWFINDGLUTENFREE, U.S. Reg. No. 5189310 identical to the marks challenged in the combined Oppositions.

**Fifth Affirmative Defense
(Prior Registration)**

19. Applicant's owns prior registration for the mark NOWFINDGLUTENFREE, U.S. Reg. No. 5189310 which is identical to the marks challenged in the combined Oppositions.

**Sixth Affirmative Defense
(Other Affirmative Matter - Existence of a House Mark)**

20. Applicant owns and uses a variety of related and similar-sounding trademarks for distinct yet related products.

21. Applicant owns and uses a family of trademarks which includes NOW FIND ORGANIC, Registration No. 5351993, and the following applications: NOW FIND DAIRY FREE, U.S. SER. # 87597604, NOW FIND FOODS, U.S. SER. #87597529, NOW FIND VEGETARIAN, U.S. SER. #87590246, NOW FIND ORGANIC AND NON-GMO, U.S. SER. #87590205, and NOWFIND, U.S. SER. #87078424.

22. As a result, consumers are likely to recognize "NOW FIND" as a house mark for mobile software applications.

Respectfully submitted,

[signed] /david m. adler/

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Dated: January 15, 2018

CERTIFICATE OF SERVICE

David M. Adler, an attorney, certifies that pursuant to 28 U.S.C. 1746, under penalties of perjury, he caused a copy of the **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMBINED OPPOSITIONS**, to be served upon:

Counsel for Opposer
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via email to the address(es) above on January 15, 2018.



By:

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