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

|                        |   |
|------------------------|---|
| Proceeding             | 91238364  |
| Party                  | Defendant<br>Noxell Corporation   |
| Correspondence Address | Jacqueline Stelling<br>Coty Inc.<br>Empire State Building 350 Fifth Avenue, 19th Floor<br>New York, NY 10118<br>Email: trademarks@cotyinc.com |
| Submission             | Answer  |
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| Date                   | 01/19/2018  |
| Attachments            | Answer to Notice of Opposition-MELTING POUT-227306506.pdf(20358 bytes )   |

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

In the matter of Application Ser. No. 87/050,703  
Mark: MELTING POUT  
Publication Date: August 15, 2017

TOO FACED COSMETICS, LLC,

Opposer,

v.

NOXELL CORPORATION,

Applicant.

Opposition No. 91238364

**ANSWER TO OPPOSITION OF OPPOSITION**

Applicant NOXELL CORPORATION (“Applicant”) hereby submits its Answer to the Notice of Opposition (the “Opposition”) filed by Opposer TOO FACED COSMETICS, LLC (“Opposer”). Unless indicated differently, each paragraph below corresponds with the paragraph of the Opposition bearing the same number.

With regard to the first unnumbered introductory paragraph of the Opposition, Applicant admits that it filed Application Serial No. 87/050,703 to register the trademark MELTING POUT (the “Application”) but denies that Opposer will be damaged by the Application or its resulting registration.

To the extent any additional unnumbered paragraphs, captions or headings in the Opposition are treated as allegations, such allegations are hereby denied.

1. Applicant lacks sufficient knowledge or information regarding the allegations contained in Paragraph 1 of the Opposition to admit or deny and, on that basis, denies each and every allegation contained therein.

2. Applicant lacks sufficient knowledge or information regarding the allegations contained in Paragraph 2 of the Opposition to admit or deny and, on that basis, denies each and every allegation contained therein.

3. Applicant lacks sufficient knowledge or information regarding the allegations contained in Paragraph 3 of the Opposition to admit or deny and, on that basis, denies each and every allegation contained therein.

4. Applicant lacks sufficient knowledge or information regarding the allegations contained in Paragraph 4 of the Opposition to admit or deny and, on that basis, denies each and every allegation contained therein.

5. Applicant admits that it filed the Application for “cosmetics” in Class 3. As to the remaining allegations in paragraph 5 of the Opposition, Applicant lacks sufficient information or belief to admit or deny these allegations, and therefore denies each and every such allegation.

6. Applicant lacks sufficient knowledge or information regarding the allegation contained in Paragraph 6 of the Opposition that Opposer “consistently uses the term MELTED in or as part of its trademarks for its goods” and, on that basis, denies such allegation. Applicant denies each and every remaining allegation contained in Paragraph 6 of the Opposition.

7. Applicant admits that it filed the Application for “cosmetics” in Class 3. Except as so admitted, Applicant denies each and every remaining allegation contained in Paragraph 7 of the Opposition.

8. Applicant denies the allegations contained in Paragraph 8 of the Opposition.

9. Applicant denies the allegations contained in Paragraph 9 of the Opposition.
10. [Paragraph 10 is omitted from Opposition].
11. Applicant denies the allegations contained in Paragraph 11 of the Opposition.

### **AFFIRMATIVE DEFENSES**

In addition to the foregoing, and as separate and distinct affirmative defenses to Opposer's claims, Applicant alleges as follows:

#### Failure to State a Claim

Opposer has failed to allege grounds sufficient to sustain the Opposition.

#### No Priority or Likelihood of Confusion

Opposer does not have rights in or to a mark which is likely to be confused with the mark subject of the Application, and specifically as an alternative defense to a claim of seniority, nor is there any likelihood of confusion, mistake, or deception between with the mark subject of the Application and any mark which Opposer is using.

#### Descriptiveness

Opposer's use of its purported mark(s) was and, if continuing, is wholly descriptive and not as trademarks.

#### Additional Defenses

Applicant is without sufficient information to know at the present time whether additional affirmative defenses may be applicable to Opposer's claims. Accordingly, Applicant expressly reserves the right to assert further affirmative defenses should it learn that any such defenses are available.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice, and that the prayer for relief contained therein be denied.

Dated: January 19, 2018

By: /s/Paul W. Garrity  
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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 19th day of January, 2018.

*/s/Tyler E. Baker*  
Tyler E. Baker

**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being sent via electronic mail to:

uspto@goodmanmooney.com

on this 19th day of January, 2018.

*/s/Tyler E. Baker*  
Tyler E. Baker