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

Proceeding	91238863
Party	Defendant Alyse Zavala
Correspondence Address	A. JUSTIN ELDRETH KLISH AND ELDRETH, PLLC 115 S SAINT MARYS ST STE C, RALEIGH, NC 27603 Email: justin@klisheldreth.com
Submission	Answer
Filer's Name	A. Justin Eldreth
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Date	02/19/2018
Attachments	Answer to Opposition No 91238863.pdf(90922 bytes)

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

Kiss Catalog, Lt.d,

Opposer,

v.

Alyse Zavala,

Applicant.

Opposition No. 91238863

Mark: KISS THE CURSE

Serial No.: 87,443,022

ANSWER

BOX TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant/Defendant, Alyse Zavala (hereinafter “Applicant”), by and through her undersigned attorney, hereby Answers the Opposition filed by the Opposer/Plaintiff, Kiss Catalog, Lt.d (hereinafter “Opposer”). Any allegation of the Opposition no specifically admitted herein is denied:

1. Applicant admits that Kiss is a band, but is without knowledge or information sufficient to form a belief as to all the allegations of this paragraph and therefore denies the same.
2. Applicant admits that Kiss sales a variety of merchandise, but is without knowledge or information sufficient to form a belief as to the type and quantity of the merchandise or the areas of sales and therefore denies the same.
3. Applicant admits the allegations of this paragraph.
4. Applicant admits the allegations of this paragraph.

5. Applicant admits the allegations in the first sentence of this paragraph. The second sentence is a legal conclusion to which no response is required, but to the extent a response is required, Applicant denies the allegations therein.

6. Applicant denies that the words found within its mark stand alone as separate terms and that the addition of words is slight or “mere” in any way when it comes to the commercial impression of Applicant’s mark. The second and third sentences are a legal conclusion to which no response is required, but to the extent a response is required, Applicant denies the allegations therein. Applicant denies all allegations in this paragraph.

7. Applicant is without knowledge or information sufficient to form a belief as to what the Opposer believes, further, Applicant denies all allegations of this paragraph.

8. This paragraph is a legal conclusion to which no response is required, but to the extent a response is required, Applicant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies the same.

9. This paragraph is a legal conclusion to which no response is required, but to the extent a response is required, Applicant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies the same.

10. This paragraph is a legal conclusion to which no response is required, but to the extent a response is required, Applicant is without knowledge or information sufficient to form a belief as to the allegations of this paragraph and therefore denies the same.

11. The first sentence is a legal conclusion to which no response is required, but to the extent a response is required, Applicant is without knowledge or information sufficient to form a belief as to the allegations in the first sentence of this paragraph and therefore denies the same. Applicant admits the allegations in the second sentence.

12. This paragraph is a legal conclusion to which no response is required, but to the extent a response is required, Applicant denies the allegations therein.

13. This paragraph is a legal conclusion to which no response is required, but to the extent a response is required, Applicant denies the allegations therein.

14. Applicant denies the allegations in this paragraph. The second sentence is a legal conclusion to which no response is required, but to the extent a response is required, Applicant denies the allegations therein.

15. Applicant admits the allegations in this paragraph.

16. Applicant denies the allegations in this paragraph.

17. Applicant admits the allegations in this paragraph.

18. Applicant denies the allegations in this paragraph.

19. Applicant denies the allegations in this paragraph.

20. Applicant admits the allegations in this paragraph.

21. Applicant denies the allegations in this paragraph.

22. Applicant denies the allegations in this paragraph.

FIRST AFFIRMATIVE DEFENSE

The Opposition fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer is barred from bringing and/or maintaining the Opposition under the Doctrine of Acquiescence.

THIRD AFFIRMATIVE DEFENSE

Opposer is barred from bringing and/or maintaining the Opposition under the Doctrine of Equitable Estoppel.

FOURTH AFFIRMATIVE DEFENSE

Opposer is barred from bringing and/or maintaining the Opposition because Applicant's mark and Opposer's pleaded marks are not likely to cause confusion, mistake, or deception among purchases between Applicant's goods and services and the goods and services pled by Opposer.

FIFTH AFFIRMATIVE DEFENSE

Opposer is barred from bringing and/or maintaining the Opposition as Opposer has not used KISS THE CURSE as a trademark.

SIXTH AFFIRMATIVE DEFENSE

Applicant reserves the right to assert additional affirmative defenses if it discovers facts on which such defenses may be based.

WHEREFORE, Applicant respectfully prays for judgment dismissing this Opposition with prejudice. Applicant requests such other and further relief as the Board may deem just and proper.

Respectfully submitted, this the 19th of February, 2018.

KLISH & ELDRETH, PLLC

By: */s/ A. Justin Eldreth*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer to Opposition was filed electronically with the United State Trademark Trial and Appeal Board and was also served by first-class mail, postage prepaid to the Opposer's attorney Joseph Young Associates, Ltd., and by email to Gordon, Herlands, & Randolph, LLP addressed as follows:

Joseph Young Associates, Ltd.
18 Hook Mountain Rd. Suite 20
Pine Brook, NJ 070589

Gordon, Herlands, & Randolph, LLP
Attn: Peter Vranum
355 Lexington Ave.
New York, NY 10017
pvranum@gordonherlands.com

This the 19th of February, 2018.

KLISH & ELDTRETH, PLLC

By: */s/ A. Justin Eldreth*

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