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

Proceeding	91239677
Party	Defendant Kobe Family Entertainment, Inc.
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Attachments	Canvas City Answer to Notice of Opposition.pdf(168306 bytes)

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

Color Image Apparel, Inc.,

Opposer,

v.

Kobe Family Entertainment, Inc.,

Applicant.

In re Application Serial No. 87/386,378
Mark: CANVAS CITY

Opposition No. 91239677

**ANSWER AND AFFIRMATIVE DEFENSES OF APPLICANT KOBE FAMILY
ENTERTAINMENT, INC. TO OPPOSER'S NOTICE OF OPPOSITION**

Applicant, Kobe Family Entertainment, Inc., (hereinafter "KFE" or "Applicant"), by and through its counsel, Saltz Matkov P.C., hereby files its Answer and Defenses to the Notice of Opposition filed by Opposer, Color Image Apparel, Inc., (hereinafter "Opposer"), to Application Serial No. 87/386,378 for the mark CANVAS CITY for use in connection with its filed-for goods in International Class 25. KFE denies Opposer's allegation that it will be damaged by the registration of CANVAS CITY and responds as follows to Opposer's remaining allegations:

1. Denied. After reasonable investigation, Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation.
2. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.
3. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the

truth of this allegation, and it is therefore denied.

4. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

5. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

6. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

7. Admitted in part and denied in part. It is admitted only that Petitioner applied for Registration Nos. 3,884,550, 4,254,778 and 4,360,649 (“Opposer’s Marks”) with the United States Patent and Trademark Office (“PTO”). The remaining allegations are denied as conclusions of law to which no response is required.

8. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

Applicant’s Trademark Application

9. Admitted.

10. Admitted. By way of further response, in addition to its filed-for goods in International Class 25, Applicant filed Application No. 87/386,378 on March 27, 2017 for the mark CANVAS CITY (“Applicant’s Mark”) for use in connection with the following:

[a]udio and video recordings featuring sports, adventure programs, biography, comedy, drama, fantasy and adventure programs, history, horror, musical recordings, mystery, romance, science fiction; audiovisual recordings featuring animation; Cases for mobile phones; Computer game software for use on mobile and cellular phones; Decorative magnets; Downloadable electronic game software for use on mobile and cellular phones; Downloadable image file containing artwork, text, audio, video, games and Internet Web links relating to sporting and cultural activities; Protective covers and cases for tablet computers

in International Class 9;

[b]each towels; Bed blankets; Blanket throws; Towels; Beach towels

in International Class 24;

[e]ducational and entertainment services, namely, a continuing program about sports, action, adventure, animation, biography, comedy, crime, documentary, drama, fantasy, history, horror, musical, mystery, romance, science fiction accessible by means of satellite, television, cable television, internet, web-based applications, mobile phone applications, computer networks, wireless networks, audio, video; Entertainment services, providing on-line computer games; Entertainment services, namely, providing a web site featuring photographic, video and prose presentations featuring sports, action, adventure, animation, biography, comedy, crime, documentary, drama, fantasy, history, horror, musical, mystery, romance, science fiction; Multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; Production and distribution of motion pictures; Providing information in the field of entertainment, featuring animation rendered by means of a global computer network; Providing a website featuring entertainment information in the field(s) of sports, action, adventure, animation, biography, comedy, crime, documentary, drama, fantasy, history, horror, musical, mystery, romance, science fiction

in International Class 41; and

[o]n-line social networking services

in International Class 45.

11. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

12. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

13. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

14. Denied. This allegation is denied as a conclusion of law to which no response is required.

15. Denied. This allegation is denied as a conclusion of law to which no response is required.

16. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further response, the identification of goods in the registrations for Opposer's Marks in Exhibit A, being in writing, speaks for itself.

17. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further response, the identification of goods in the Application, being in writing, speaks for itself.

18. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further response, the identification of goods in the registrations for Opposer's Marks in Exhibit A, being in writing, speaks for itself.

19. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further response, the identification of goods in the Application, being in writing, speaks for itself.

20. Denied. After reasonable investigation, Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation.

21. Denied. After reasonable investigation, Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation.

22. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further response, the identification of goods in the Application, being in writing, speaks for itself.

Likelihood of Confusion
Section 2(d) of The Lanham Act: 15 U.S.C. §1052(d)

23. Applicant hereby incorporates by reference its responses to paragraphs 1 through 22 of Opposer's Notice of Opposition as if more fully set forth at length herein.

24. Denied. This allegation is denied as a conclusion of law to which no response is required.

25. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation

Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied. By way of further response, the Application and Registrations at issue, being in writing, speak for themselves.

26. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

27. Denied. This allegation is denied as a conclusion of law to which no response is required. To the extent this allegation is deemed factual in nature, after reasonable investigation Applicant is without sufficient information or knowledge from which to form a belief as to the truth of this allegation, and it is therefore denied.

28. Denied. This allegation is denied as a conclusion of law to which no response is required.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and judgment be entered in favor of Applicant and against Opposer.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Opposer does not have rights to Applicant's Mark in connection with its filed-for goods in International Class 25.

SECOND DEFENSE

Applicant's Mark in connection with its filed-for goods in International Class 25 is not confusingly similar to Opposer's Marks.

THIRD DEFENSE

The subject Notice of Opposition is preempted under the doctrine of waiver.

FOURTH DEFENSE

The subject Notice of Opposition is preempted under the doctrine of estoppel.

FIFTH DEFENSE

In filing the subject Notice of Opposition, Opposer engages in trademark misuse, and therefore has unclean hands. Opposer attempts to expand its trademark rights beyond what the law might reasonably be interpreted to allow.

SIXTH DEFENSE

Opposer attempts to challenge Applicant's Mark with unclean hands as, upon information and belief, its clothing products are willfully used to infringe upon the name, image and likeness and/or intellectual property rights of others by third party resellers and t-shirt printing services.

SEVENTH DEFENSE

The term "CANVAS" when used on or in connection with the goods of Opposer, Opposer's registrations, and Opposer's applications is only descriptive of them because it merely describes an ingredient, feature and characteristic of Opposer's goods or is deceptively misdescriptive of them because it misdescribes Opposer's goods to consumers who are likely to believe the misrepresentation, and thus is an unregistrable component of the mark.

Applicant reserves the right to supplement these affirmative defenses following further opportunity for investigation and discovery.

Dated: April 4, 2018

Respectfully submitted,

By: /s/Matthew D. Matkov
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CERTIFICATE OF SERVICE

I do hereby certify that this 4th day of April 2018, pursuant to 37 C.F.R. § 2.119(a), I caused a true and correct copy of the foregoing Answer and Affirmative Defenses of Applicant Kobe Family Entertainment, Inc. to Opposer's Notice of Opposition to be served via email upon the following:

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