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

Proceeding	91241488
Party	Plaintiff Perfectly Posh, LLC
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Date	08/05/2019
Attachments	Kasteler Declaration - REDACTED - PUBLIC - Signed.pdf(856400 bytes)

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

<p>PERFECTLY POSH, LLC</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>JACQUELINE ABNER-PONGRATZ,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No.: 91241488</p> <p>Trademarks: POSH GOTH,</p> <div style="text-align: center;"></div> <p>Serial Nos.: 87609820, 87646907</p>
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DECLARATION OF LARANE KASTELER

I, LaRane Kasteler, make the following Declaration under penalty of perjury and pursuant to 37 C.F.R. § 2.20:

1. I am the Department Head for Compliance and Regulatory at Perfectly Posh, LLC (“Perfectly Posh”). I have worked at Perfectly Posh since early 2016 and have responsibility for the goods and services sold and advertised under Opposer’s Marks as defined in Perfectly Posh’s Notice of Opposition. In that capacity, I am familiar with Perfectly Posh’s policies and practices regarding its business and its trademarks. I am additionally familiar with the facts of this case and am competent and authorized to make this Declaration on behalf of the Opposer. The facts set forth below are known to me personally or based upon my review of records kept by Perfectly Posh in the ordinary course of business.

PERFECTLY POSH, LLC: BACKGROUND

2. Perfectly Posh is a leading distributor of naturally-based pampering skincare, cosmetic, and scented products throughout the United States.

3. Since 2011, Opposer has shipped over 300 million pampering products under its PERFECTLY POSH Marks as defined in the Notice of Opposition.

4. Opposer also supports You Deserve It, a charitable pampering products company that offers resources to causes and organizations that benefit women across the United States. Please see a true and correct copy of a You Deserve It pamphlet submitted with Opposer's Notice of Reliance ("Opp. NoR") as **Exhibit 20**.

5. Opposer sells its products nationally through the Internet and through its Independent Consultants' websites, social media, and in-person events. PERFECTLY POSH-branded products and services are marketed to and used by consumers of naturally-based skincare, cosmetic, and scented products.

6. Perfectly Posh Independent Consultants develop their own businesses promoting and selling Perfectly Posh-branded products. Opposer provides opportunities for over 50,000 such business owners in the United States. Please see a true and correct copy of a list of selected Perfectly Posh Independent Consultants submitted with Opp. NoR as **Exhibit 28**.

7. Opposer provides its Independent Consultants with tools, training, support staff, opportunity to oversee a team, and a generous commission and bonus structure. Please see the true and correct documents reflecting Opposer's Independent Consultant training resources submitted with Opp. NoR as **Exhibits 16 and 19**. Please see the true and correct documents reflecting Opposer's Independent Consultant commission and bonus structure submitted with Opp. NoR as **Exhibit 13**.

8. Opposer offers training and business strategy conferences in connection with its PERFECTLY POSH Marks for its Independent Consultants across the United States, including but not limited to in Chicago, Salt Lake City, Tampa, Seattle, Louisville, Los Angeles, Dallas,

Boston, Durham, Miami, Pittsburgh, Memphis, and Baltimore. Please see the true and correct examples of these Independent Consultant meeting and conference materials submitted with Opp. NoR as **Exhibit 17**.

9. Perfectly Posh has expended significant money and effort in promoting the PERFECTLY POSH Marks to the public through its marketing and advertising efforts and its Independent Consultants. Below please see a table showing true and accurate marketing and advertising expenditures under the PERFECTLY POSH Marks from 2015 to 2019 (through approximately March 21), which was provided to Applicant in response to Applicant's Interrogatory No. 12:

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

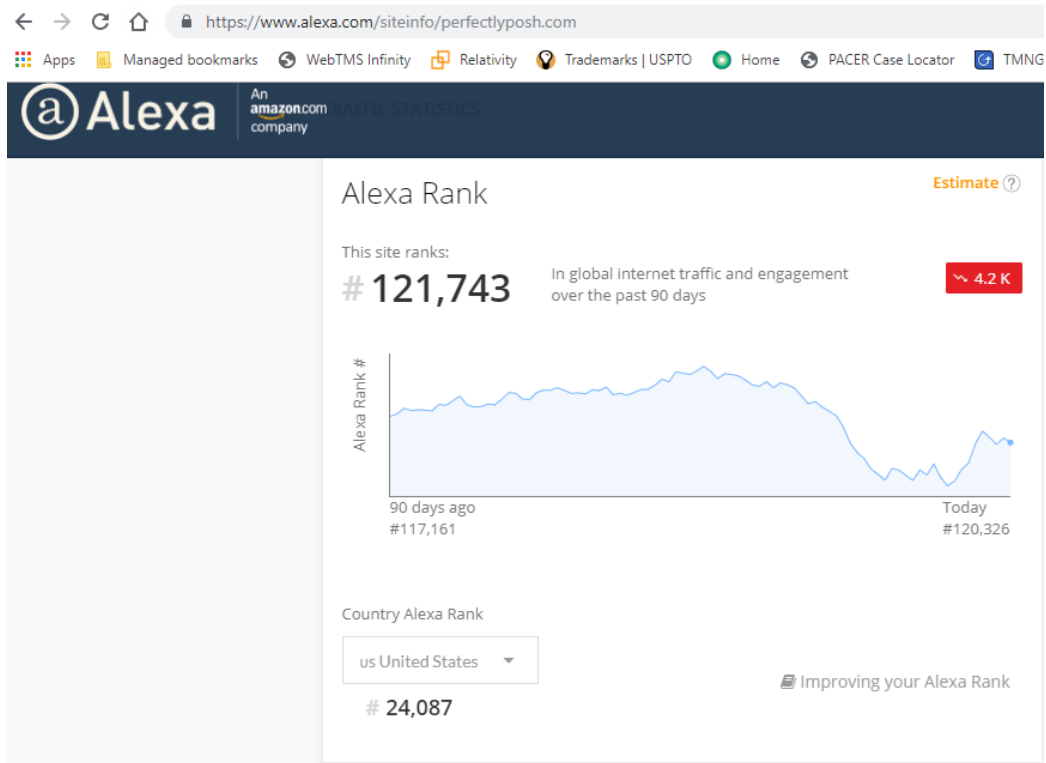
10. Perfectly Posh uses the PERFECTLY POSH Marks on several point-of-sale materials, including but not limited to business cards, gift certificates, shipping labels, and product packaging. Please see the true and correct examples of these materials submitted with Opp. NoR as **Exhibits 12, 15, and 18**.

11. As part of its efforts to market and promote its goods and services under the PERFECTLY POSH Marks, Perfectly Posh maintains several social media accounts, including but not limited to Facebook (<https://www.facebook.com/ohmyposh/>, currently approximately 179,931 followers), Instagram (https://www.instagram.com/perfectly_posh/?hl=en, currently approximately 77,500 followers), YouTube (<https://www.youtube.com/channel/UC7ZAm8hVf9->

[dNhiWvCaCFWg](#), currently approximately 7,729 subscribers), and Twitter

(https://twitter.com/posh_corp?lang=en, currently 12,600 followers).

12. The <www.perfectlyposh.com> website ranks in the top 25,000 websites in the United States, according to Alexa.com. Please see below for a true and accurate screenshot of the Alexa results for www.perfectlyposh.com on July 30, 2019:



13. Below I have included a chart that accurately represents the total revenues under the PERFECTLY POSH Marks from 2015-2019 (through approximately March 21), which was provided to Applicant in response to Applicant's Interrogatory No. 13. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

14. As a result of years of extensive advertising and investment, and resulting consumer recognition, the PERFECTLY POSH Marks and the goodwill associated with them are among Perfectly Posh's most important business assets.

PERFECTLY POSH MARKS

15. The PERFECTLY POSH Marks have been used by Perfectly Posh since at least as early as September 30, 2011. Perfectly Posh's continuous use of the mark for almost 8 years has led consumers to associate Perfectly Posh's quality goods and services with Perfectly Posh, contributing to the strength of the PERFECTLY POSH Mark as an identifier of Opposer's goods and services.

16. Submitted with Opp. NoR as **Exhibits 1, 2, and 3** are true and correct copies of the Registrations and Application and TSDR Printouts for Perfectly Posh's PERFECTLY POSH Marks, the first of which was registered in 2013 (the "Perfectly Posh Registrations").

17. The Perfectly Posh Registrations claim "Personal care products, namely, hand lotion, non-medicated balm for use on hands, non-medicated hand soap, body lotion, body butter, skin care preparations namely, body balm, body soap, namely body bath soap and body cream soap, body mist spray, face lotion, face oils, face creams, exfoliating skin masks, shampoos, hair conditioners, massage cream, massage balm not for medical purposes, massage oil, bath fizzies, bath beads, non-medicated bath salts, non-medicated foot cream, non-medicated foot balm, non-medicated foot lotion, non-medicated lip balm, lip tint, perfume, perfume oils, nutritional oils for cosmetic purposes, essential oils for personal use, essential oils for aromatherapy use, non-medicated exfoliating preparations for lips, mineral powders for use as cosmetic makeup, mineral makeup, aromatic oils, non-medicated aromatic body mists,

aromatic lotions, aromatic non-medicated bath salts, non-medicated aromatic bath bombs for the skin and body for adding color and scent to bath water, bath milks, beauty milks, cosmetic milks for the skin and body” in Class 3, and Registration Nos. 4452650 and 4348174 claim “Scented and perfumed air and room freshener sprays and fresheners” in Class 5, amongst other goods and services (“Perfectly Posh Goods”). Please see the true and correct copies of documents showing examples of Perfectly Posh Goods submitted with Opp. NoR as **Exhibit 15**.

18. The Perfectly Posh Registrations submitted with Opp. NoR as **Exhibits 1-3** are valid and subsisting, and Reg. No. 4348174 is now incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b).

19. The Perfectly Posh Registrations create a legal presumption of Perfectly Posh’s ownership of the PERFECTLY POSH Marks nationwide, and the exclusive right to use the PERFECTLY POSH Marks on or in connection with the goods and/or services listed in the Registrations.

20. The Perfectly Posh Registrations for the PERFECTLY POSH Marks are not limited with respect to channels of trade, classes of consumers, or other matters.

21. The Perfectly Posh Registrations demonstrate Perfectly Posh’s priority in the PERFECTLY POSH Marks, because the Perfectly Posh Registrations show that Perfectly Posh has been using the PERFECTLY POSH Marks in U.S. commerce in connection with skincare, cosmetic, and scented products for almost 8 years, far prior to Applicant’s use and federal application filing of the POSH GOTH mark.

POLICING AND ENFORCEMENT OF OPPOSER’S MARKS

22. Perfectly Posh’s success has prompted attempts by multiple copycats to trade on Perfectly Posh’s goodwill in the marketplace. [REDACTED]

[REDACTED]

LICENSING TO INDEPENDENT CONSULTANTS

24. Perfectly Posh licenses the use of its trademarks to Independent Consultants according to the terms of its Policies and Procedures. Independent Consultants are required to assign to Opposer any mark that is identical to or a derivative of Opposer’s PERFECTLY POSH Marks that they use as a WebID (e.g., a domain name or social media handle). The Policies and Procedures state in relevant part: “Consultants shall not register or attempt to register or reserve any of the Company’s trademarks or trade names, or any derivatives of such trademarks or trade names (collectively “Marks”) for any Internet domain name, URL, subdomain name, email address, or social media handle, address, or name (collectively “Web ID”). If a Consultant does register any of the Company’s Marks in such a fashion, the Consultant agrees and hereby acknowledges that the Company owns, and shall continue to own, all rights in and to the Company’s Marks... The Consultant further agrees to immediately re-assign to the Company


any Web ID that the Consultant has registered or reserved in violation of this policy at no charge to the Company.” Please see true and correct documents showing Perfectly Posh’s Policies and Procedures submitted with Opp. NoR as **Exhibit 14**.

25. Independent Consultant for Perfectly Posh, Andrea Lipomi, has used the domain name POSHGOTH.PO.SH as her consultant website since September 2015. Additionally, Ms. Lipomi has been using the username PERFECTLY POSH GOTH on YouTube for at least two years and has been using #POSHGOTH on Instagram and Facebook since 2015. This use has been in connection with her business as a Perfectly Posh Independent Consultant, promoting and selling the goods associated with Opposer’s PERFECTLY POSH Marks. Pursuant to Perfectly Posh’s Policies and Procedures, Ms. Lipomi has assigned the PERFECTLY POSH GOTH and POSH GOTH marks to Perfectly Posh. Please see a true and correct copy of the assignment and Opposer’s business records regarding Ms. Lipomi submitted with Opp. NoR as **Exhibits 26 and 27**.

APPLICANT’S USE OF THE POSH GOTH MARK

26. Despite Perfectly Posh’s general monitoring of the skincare, cosmetic, and scented products marketplace, Perfectly Posh was not aware of Applicant, the <www.poshgoth.com> website or business, or Applicant’s social media accounts until Ms. Lipomi advised Perfectly Posh on September 15, 2017 that Applicant sent her a message earlier that day advising Ms. Lipomi to refrain from branding PERFECTLY POSH products with POSH GOTH going forward, and to remove any posts referencing POSH GOTH from all social media accounts. Ms. Lipomi also advised us that she received a YouTube complaint from Applicant on September 14, 2017.

27. I understand that Applicant also contacted Perfectly Posh staff regarding Ms. Lipomi's use of the PERFECTLY POSH GOTH and POSH GOTH Marks on September 15, 2019. Please see true and accurate screenshots of this and subsequent communications submitted with Opp. NoR as **Exhibit 24**.

28. On September 22, 2017, our outside counsel informed us that on September 15, 2017, Applicant had also filed Application No. 87609820 for POSH GOTH on an intent-to-use basis for "Bath soaps; Cosmetic preparations for body care; Cosmetics; Perfumes" ("Applicant's Goods"). Applicant later filed Application No. 87646907 for  on an intent-to-use basis on October 16, 2017 for Applicant's Goods (together, the "Applications".)

29. Accordingly Applicant had knowledge of Opposer and Opposer's Marks when Applicant filed Application Nos. 87609820 and 87646907.

30. On October 2, 2017, Ms. Lipomi advised Perfectly Posh that Applicant continued to send harassing messages to her over Instagram and Facebook.

31. After Ms. Lipomi advised us of Applicant's communications and in the course of this Opposition, I have reviewed Applicant's Facebook account at <https://www.facebook.com/PoshGoth/>. The account has approximately 23,355 followers and advertises goods that are for sale on the <www.poshgoth.com> website. I have also reviewed Applicant's Instagram page at <https://www.instagram.com/poshgothapothecary/?hl=en>, which has approximately 1,899 followers, and Applicant's Twitter page at https://twitter.com/posh_goth, which has approximately 13 followers.

32. According to Applicant's discovery responses, Applicant began to use the POSH GOTH Mark in January 2015, well after Perfectly Posh began using its PERFECTLY POSH Marks in 2011.

33. In connection with this Opposition, I reviewed the <www.poshgoth.com> website. It appears from her website that Applicant offers an online retail store for naturally-based skincare, cosmetic, and scented products. Please see true and correct PDF printouts of pages from the <www.poshgoth.com> website submitted with Opp. NoR as **Exhibit 22**.

34. Listed items under the POSH GOTH mark show various price points from approximately \$7-\$20, which is the same general range under which Perfectly Posh sells its titanium products under Opposer's Marks. *See id.* and a true and correct copy of a document reflecting Perfectly Posh's pricing submitted with Opp. NoR. as **Exhibit 21**.

35. The listed items appear to be aimed at consumers of naturally-based skincare, cosmetic, and scented products.

PERFECTLY POSH AND APPLICANT

36. Applicant had knowledge of Opposer and Opposer's Marks when she filed her Applications for the POSH GOTH Mark. Accordingly the filing of her applications was in bad faith.

37. Applicant's conduct continues to exhibit bad faith, as our review of Applicant's social media accounts has revealed several instances of Applicant disparaging Perfectly Posh and Ms. Lipomi, beginning in November 2017 and continuing to the present. The posts name Perfectly Posh specifically. Please see true and accurate screenshots of Applicant's social media posts submitted with Opp. NoR as **Exhibit 4**. Examples of Applicant's comments include:

- "Better than getting MLM samples"
- Posting article titled "David & Goliath: The Fight for my Trademark" and stating "I will be sharing my own story soon."

- “He left out the part where MLMs frivolously sue Etsy sellers after their daft distributors hijack the Etsy seller’s business name, and then the MLM CEO turns around and alters their appearance to look exactly like the Etsy seller...”
- “As long as it’s not an MLM cult we cool...”

Below please find a true and accurate screenshot of one of Applicant’s more recent posts:



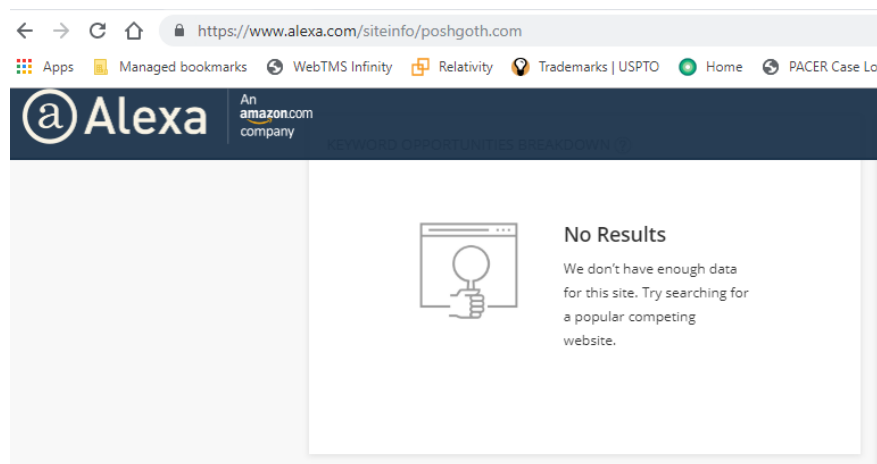
38. The POSH GOTH mark wholly incorporates the dominant POSH portion of Opposer’s PERFECTLY POSH Marks.

39. Perfectly Posh and Applicant offer identical goods, namely naturally-based skincare, cosmetic, and scented products. The goods offered under Opposer’s Marks and the POSH GOTH mark in Applicant’s Applications are offered at identical or overlapping price points.

40. Perfectly Posh and Applicant offer these goods through identical trade channels, namely, through their websites and social media platforms.

41. Perfectly Posh and Applicant have identical consumers, namely users of online personal products stores and consumers of naturally-based skincare, cosmetic, and scented products.

42. My understanding is that Applicant's POSH GOTH business is relatively small and limited to online sales. I have not come across advertising under the POSH GOTH brand aside from Applicant's social media pages, of which I was unaware prior to receiving notice of Applicant from Ms. Lipomi. The <www.poshgoth.com> website does not have an Alexa rank because there is insufficient data as of July 30, 2019. Please see a true and correct screenshot of the <www.alexa.com> results below:

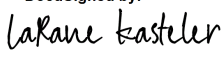


43. Given the small size of Applicant's business, it is not surprising to me that Perfectly Posh was unaware of Applicant and her POSH GOTH-branded business until Ms. Lipomi notified us of Applicant on September 15, 2017.

44. The PERFECTLY POSH Marks have priority over the POSH GOTH Mark in Applicant's Applications. Accordingly, Perfectly Posh is entitled to exclusive use of its PERFECTLY POSH Marks in the United States and to enforce those rights against infringement, such as Applicant's unauthorized use and attempted registration of the POSH GOTH Mark.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true. 37 C.F.R. § 2.20.

Date: August 5, 2019

DocuSigned by:


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LaRane Kasteler
Department Head for Compliance and Regulatory
Perfectly Posh, LLC

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