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

Proceeding	91241488
Party	Defendant ABNER-PONGRATZ, JACQUELINE
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Date	07/09/2018
Attachments	Answer and defenses.pdf(118608 bytes)

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

**In the Matter of Application Serial No.: 87609820 & 87646907
Published in the *Official Gazette* on: January 30, 2018**

Perfectly Posh, LLC

Opposer,

v.

Opposition no.: 91241488

Jacqueline Abner-Pongratz,

Applicant.

_____ /

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S ANSWER AND DEFENSES
TO OPPOSER'S CONSOLIDATED
NOTICE OF OPPOSITION**

In response to the Notice of Institution issued by the Board on May 31, 2018, *Jacqueline Abner-Pongratz* ("Applicant") hereby responds to *Perfectly Posh, LLC's* ("Opposer") Notice of Opposition as follows:

ANSWER

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 1 of the Notice of Opposition, and therefore denies same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 2 of the Notice of Opposition, and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 3 of the Notice of Opposition, and therefore denies same, except that Applicant admits that the website “www.perfectlyposh.com” appears to offer products for sale.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 4 of the Notice of Opposition, and therefore denies same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of those matters asserted in Paragraph 5 of the Notice of Opposition and therefore denies same except that Opposer is identified on the Patent and Trademark Office data base as the owner of the application 87689357 and the registration 4348174 and 3342650 (“Opposer’s Marks”).

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 6 of the Notice of Opposition, and therefore denies same, except that Applicant asserts that the application and registration certificates for Opposer’s Marks speak for themselves.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 7 of the Notice of Opposition, and therefore denies same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 8 of the Notice of Opposition, and therefore denies same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 9 of the Notice of Opposition, and therefore denies same.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 10 of the Notice of Opposition, and therefore denies same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 11 of the Notice of Opposition, and therefore denies same.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 12 of the Notice of Opposition, and therefore denies same.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 13 of the Notice of Opposition, and therefore denies same.

14. Admitted.

15. Denied.

16. Denied.

17. Denied

18. Admitted.

19. Denied, except that Applicant admits that Applicant attempted to amicably address the use of the mark POSH GOTH by Opposer's representative by calling Opposer's representative on September 15, 2017 after having sent a message regarding that use on September 13, 2017.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Applicant restates and incorporates by reference its answers to paragraphs 1-26 of the Notice of Opposition.

28. Denied, except that Applicant admits that Opposer has no control over the nature and quality of the products and services provided by Applicant.

29. Denied.

30. Denied.

31. Applicant restates and incorporates by reference its answers to paragraphs 1-30 of the Notice of Opposition.

32. Denied.

33. Denied.

34. Denied.

35. Applicant restates and incorporates by reference its answers to paragraphs 1-34 of the Notice of Opposition.

36. Admitted.

37. Denied.

38. Denied.

39. Denied.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts that:

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

SECOND AFFIRMATIVE DEFENSE

Opposer's marks do not have priority over Registrant's Marks.

THIRD AFFIRMATIVE DEFENSE

Opposer's Mark and Opposer's alleged common law mark (collectively "Opposer's Marks") are not valid trademarks.

FOURTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrines of laches, estoppel, and/or waiver.

FIFTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Opposer is estopped from asserting claims against Applicant as Opposer has acquiesced to use of the mark by Applicant.

SEVENTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of fraud.

EIGHTH AFFIRMATIVE DEFENSE

Opposer cannot claim exclusive rights in Opposer's marks and/or has abandoned or lost its rights in those marks, because Opposer cannot show continuous use of its marks in commerce.

NINTH AFFIRMATIVE DEFENSE

Opposer cannot claim exclusive rights in Opposer's marks and/or has abandoned or lost its rights in those marks, because Opposer cannot show that Opposer's marks have developed significant goodwill among the consuming public and consumer acceptance of the goods offered by Opposer in conjunction with Opposer's marks.

TENTH AFFIRMATIVE DEFENSE

Opposer cannot claim exclusive rights in Opposer's marks and/or has abandoned or lost its rights in those marks, because Opposer has misused its marks, and/or has failed to use its marks in a manner consistent with its registration and applications, and/or has failed to use its marks consistently in connection with particular goods and/or services, and/or has failed to use its marks in a manner consistent with the requirements of law and proper procedure necessary to acquire such rights.

ELEVENTH AFFIRMATIVE DEFENSE

The term “POSH” is a weak term that is the subject of over 250 applications and/or registrations with the Patent and Trademark Office. As such, the Opposer’s mark is entitled to only a very narrow scope of protection.

RELIEF REQUESTED

WHEREFORE, Applicant respectfully requests that this opposition proceeding be dismissed, with prejudice.

Respectfully submitted,



William E. O'Brien, Esq.
Attorney for the Applicant

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE U.S. PATENT AND TRADEMARK OFFICE ON July 9, 2018.



William E. O'Brien, Esq.

Certificate of Service:

I hereby certify that a true and complete copy of the foregoing ANSWER DEFENSES and COUNTERCLAIM has been served by mailing said copy on July 9, 2018 via email to Opposer's counsel of record.

Date: July 9, 2018

A handwritten signature in black ink, appearing to read "W. E. O'Brien", is written above a horizontal line.

By: William E. O'Brien, Esq.