

ESTTA Tracking number: **ESTTA923919**

Filing date: **09/24/2018**

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

Proceeding	91242987
Party	Defendant TOGETHER BEAUTY LLC
Correspondence Address	RUTH KHALSA LEGALFORCE RAPC WORLDWIDE, P.C. 446 E SOUTHERN AVE TEMPE, AZ 85282 UNITED STATES trademarks@legalforce.com no phone number provided
Submission	Answer
Filer's Name	Ruth Khalsa
Filer's email	ruth@legalforcelaw.com, lfdisputes@legalforcelaw.com
Signature	/rk/
Date	09/24/2018
Attachments	Answer 91242987.pdf(370216 bytes)

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

YOUTH TO THE PEOPLE, INC., Opposer, v. TOGETHER BEAUTY, LLC, Applicant.	Opposition No. 91242987 Mark: FLOWER TO THE PEOPLE U.S. Ser. No.: 87/805,407
---	---

APPLICANT'S ANSWER

Applicant TOGETHER BEAUTY, LLC, (“Applicant”), a Louisiana limited liability company with an address of 42 Wooster Street, New York, New York 10013, through undersigned counsel, hereby timely submits its Answer to the Notice of Opposition filed by Opposer YOUTH TO THE PEOPLE, Inc. (“Opposer”), by generally denying all of the allegations in the Notice of Opposition, and denying that Opposer will be damaged by the registration of Applicant’s mark at Serial No 87/805,407. For its Answer, Applicant admits, denies, and avers as follows:

1. Answering Paragraph 1 of the Notice of Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on that basis denies same and leaves Opposer to its proof.
2. Answering Paragraph 2 of the Notice of Opposition, Applicant admits the allegations therein.
3. Answering Paragraph 3 of the Notice of Opposition, Applicant lacks sufficient

knowledge or information to form a belief as to the truth of the allegations therein, and on that basis denies same and leaves Opposer to its proof.

4. Answering Paragraph 4 of the Notice of Opposition, Applicant avers that the records of the USPTO speak for themselves as to the contents of U.S. Trademark Registration No. 4,735,862 (the “’862 Registration”). Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4 relating to Opposer’s alleged date of first use of the mark represented in the ’862 Registration, and therefore denies same and leaves Opposer to its proof.

5. Answering Paragraph 5 of the Notice of Opposition, Applicant avers that the records of the USPTO speak for themselves as to the contents of U.S. Trademark Application Ser. No. 87/690,052 (the “052 Application”). Applicant denies that Opposer’s constructive priority date for hair care preparations is March 7, 2015. Despite listing a first use date of March 7, 2015, for some of the goods in International Class 003 on Opposer’s application at U.S. Serial No. 87/690,052, all of the hair care preparations listed on Opposer’s application at U.S. Serial No. 87/360,052 are listed on an “intent to use” basis. Opposer’s application at U.S. Serial No. 87/360,052 was not filed until November 17, 2017. Accordingly, Opposer’s constructive priority date with respect to hair care preparations is November 17, 2017, not March 7, 2015 as Opposer’s Notice of Opposition alleges. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 5 and therefore denies same and leaves Opposer to its proof.

6. Answering Paragraph 6 of the Notice of Opposition, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies same and leaves Opposer to its proof.

7. Answering Paragraph 7 of the Notice of Opposition, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein, and therefore denies same and leaves Opposer to its proof.

8. Applicant admits the allegations of Paragraph 8 of the Notice of Opposition.

9. Applicant admits the allegations of Paragraph 9 of the Notice of Opposition.

10. The allegations of Paragraph 10 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof

11. The allegations of Paragraph 11 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. Applicant specifically denies that Opposer would be damaged in any way as a result of the registration of Applicant's Mark FLOWER TO THE PEOPLE in connection with the goods identified in Applicant's application which is the subject of this Opposition.

12. The allegations of Paragraph 12 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. Applicant specifically denies that likelihood of consumer confusion within the meaning of Section 2(d) of the Trademark Act, 15 USC 1052(d) would result from the registration of Applicant's Mark FLOWER TO THE PEOPLE in connection with the goods identified in Applicant's application which is the subject of this Opposition

13. The allegations of Paragraph 13 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. .

14. The allegations of Paragraph 14 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. .

15. The allegations of Paragraph 15 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. .

16. The allegations of Paragraph 16 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. .

17. The allegations of Paragraph 17 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. Applicant specifically denies that registration of Applicant's FLOWER TO THE PEOPLE mark would be inconsistent with any alleged rights belonging to Opposer, or would result in harm, damage, or destruction to any statutory or common law property interest of Opposer.

18. The allegations of Paragraph 18 consist of legal conclusions to which no response is necessary. To the extent that any response is necessary, Applicant lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and leaves Opposer to its proof. Applicant specifically denies that registration of Applicant's FLOWER TO THE PEOPLE mark would be inconsistent with any alleged rights belonging to Opposer, or would result in harm, damage, or destruction to any statutory or common law property interest of Opposer.

WHEREFORE, Applicant respectfully requests that all of Opposer's claims in the Notice of Opposition be denied, and that the Opposition be dismissed with prejudice.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Applicant avers and alleges as follows:

1. Opposer fails to state a claim upon which relief can be granted under Section 2(d) of the Trademark Act, 15 USC 1052(d). Despite listing a first use date of March 7, 2015, for some of the goods in International Class 003 on Opposer's application at U.S. Serial No. 87/690,052, all of the hair care preparations listed on Opposer's application are listed on an "intent to use" basis. Opposer's application at U.S. Serial No. 87/360,052 was not filed until November 17, 2017. Accordingly, Opposer's constructive priority date with respect to hair care preparations is November 17, 2017, not March 7, 2015 as Opposer's Notice of Opposition alleges. At no time prior to filing this Opposition has Opposer sold hair care preparations under its house mark YOUTH TO THE PEOPLE. Review of Opposer's website at <http://www.youthtothepeople.com> reveals that Opposer does not offer hair care preparations of any type for sale. An investigation of Opposer's website through web.archive.org similarly shows that, at no time prior to filing the Opposition has Opposer offered hair care preparations

for sale under its YOUTH TO THE PEOPLE house mark.

2. Opposer lacks standing to bring an action under Section 2(d) of the Trademark Act, 15 USC 1052(d) because Opposer cannot show it has constructive priority over Applicant with respect to hair care preparations.

3. Opposer lacks standing to bring an action under Section 2(d) of the Trademark Act, 15 USC 1052(d) because Opposer cannot show that it is entitled to any exclusive right with respect to “TO THE PEOPLE”-formative marks in connection with hair care preparations or other personal care products in International Class 003.

4. Opposer lacks standing to bring an action under Section 2(d) of the Trademark Act, 15 USC 1052(d) because Opposer cannot show that its YOUTH TO THE PEOPLE mark is similar in appearance, sound, pronunciation, commercial impression or connotation, within the meaning of *In re E. I. du Pont de Nemours & Co*, 76 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) with respect to Applicant’s FLOWER TO THE PEOPLE mark for the identified goods.

WHEREFORE, Applicant prays that Opposer’s claims in the Notice of Opposition be denied, that the Opposition be dismissed with prejudice, and that Applicant’s Mark at U.S. Serial No. 87/805,407 be permitted to proceed to registration.

Dated: 24 September, 2018

Respectfully Submitted,

/s/ Ruth K. Khalsa
Ruth K. Khalsa
LegalForce RAPC Worldwide PC
446 E Southern Avenue
Tempe, AZ 85282
ruth@legalforcelaw.com
lfdisputes@legalforcelaw.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Appearance of Counsel was served upon Opposer by electronic mail to Opposer's attorney of record, on this 24th day of September, 2018, at the following email address:

Zachary T. Page
CONKLE KREMER & ENGEL, PLC
3130 Wilshire Blvd. Suite 500
Santa Monica, CA 90403
ip@conklelaw.com

/s/ Ruth K. Khalsa
Ruth K. Khalsa