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

Proceeding	91247234
Party	Defendant GO Marketing
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Submission	Answer
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The Hebrew University of Jerusalem,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91247234
)	
Go Marketing,)	
)	
Applicant.)	
)	
)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Go Marketing (“Applicant”), by and through its counsel, hereby answers the Notice of Opposition filed by The Hebrew University of Jerusalem (“Opposer”) against U.S. Trademark Application No. 88/015,683 (“Applicant’s Application”) for EYENSTEIN (the “Mark”) by addressing each allegation as follows:

Preamble. Answering the preamble to the Notice of Opposition (the “Notice”), Applicant is without information or belief sufficient to admit or deny the allegations concerning Opposer’s organization, place of business, and/or belief with respect to the Mark and, on that basis, denies those allegations. Applicant admits that it owns U.S. Trademark Application No. 88/015,683.

1. Answering the allegations of Paragraph 1 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies those allegations.

2. Answering the allegations of Paragraph 2 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies the allegations therein.

3. Answering the allegations of Paragraph 3 of the Notice, Applicant admits that the U.S. Patent and Trademark Office (“USPTO”) records available to it indicate that Opposer owns U.S. Registration Nos. 1,479,104 (for EINSTEIN services in Class 42), 4,339,058 (for EINSTEIN for goods in Class 9), 3,591,305 (for ALBERT EINSTEIN for goods in Classes 14, 16, 20, 21, 25 and 28) and U.S. Application Nos. 75/519,755 (for EINSTEIN for services in Class 36), 78/487,259 (for EINSTEIN for services in Class 39), 78/273,213 (for ALBERT EINSTEIN for goods and services in Classes 9 and 41), and 78/273,219 (for EINSTEIN for goods and services in Classes 9, 14, 16, 18, 20, 21, 25, 28 and 41). Based on the USPTO records, however, Opposer does not own U.S. Registration No. 1,072,978 as the mark under that registration is NU-LUBE and is owned by Mr. John C. Proffitt, Jr. and has been cancelled since 1984. Moreover, the USPTO records indicate that Opposer’s U.S. Registration No. 3,591,305 for ALBERT EINSTEIN no longer covers Class 18 as the goods in Class 18 were cancelled in 2015. Applicant is without information or belief sufficient to admit or deny the remaining allegations contained in Paragraph 3 of the Notice and, on that basis, denies the remaining allegations therein.

4. Answering the allegations of Paragraph 4 of the Notice, Applicant admits that it has applied to register the Mark in connection with “eyewear, namely, sunglasses, eyeglasses and ophthalmic frames and cases therefor.” Applicant denies the remaining allegations of Paragraph 4.

5. Answering the allegations of Paragraph 5, Applicant denies the allegations therein.

6. Answering the allegations of Paragraph 6 of the Notice, Applicant denies that the Mark falsely suggest a connection with, affiliation with, or association or sponsorship by Opposer. Applicant is without information or belief sufficient to admit or deny the remaining allegations contained in Paragraph 6 of the Notice and, on that basis, denies the remaining allegations therein.

7. Answering the allegations of Paragraph 7 of the Notice, Applicant denies the allegations therein.

8. Answering the allegations of Paragraph 8 of the Notice, Applicant denies that the consuming public will likely be confused to believe that Applicant's goods are authorized, sponsored, licensed or controlled by Opposer, or are in some related to Opposer. Applicant is without information or belief sufficient to admit or deny the remaining allegations contained in Paragraph 8 of the Notice and, on that basis, denies the remaining allegations therein.

9. Answering the allegations of Paragraph 9 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies the allegations therein.

10. Answering the allegations of Paragraph 10 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies the allegations therein.

11. Answering the allegations of Paragraph 11 of the Notice, Applicant admits its corporate address is 6909 South State St. #3, Midvale, UT 84047, and that it applied to register the Mark in connection with "eyewear, namely, sunglasses, eyeglasses and ophthalmic frames

and cases therefor,” in Class 9, which was assigned U.S. Application No. 88/015,683. Applicant is without information or belief sufficient to admit or deny the remaining allegations contained in Paragraph 11 of the Notice and, on that basis, denies the remaining allegations therein.

12. Answering the allegations of Paragraph 12 of the Notice, Applicant repeats and incorporates by reference its answers to Paragraphs 1-11 above.

13. Answering the allegations of Paragraph 13 of the Notice, Applicant denies the allegations therein.

14. Answering the allegations of Paragraph 14 of the Notice, Applicant denies the allegations therein. In particular, Applicant denies that Opposer has sufficiently plead ownership of any registrations covering glasses or other vision-related goods in Class 10.

15. Answering the allegations of Paragraph 15 of the Notice, Applicant denies the allegations therein.

16. Answering the allegations of Paragraph 16 of the Notice, Applicant admits that it is not affiliated or connected with or sponsored by Opposer nor has Opposer approved of the goods offered by Applicant in connection with the Mark. Although Applicant also admits that Opposer has not granted Applicant permission to use the Mark, Applicant denies that Opposer’s permission is required for Applicant to use the Mark.

17. Answering the allegations of Paragraph 17 of the Notice, Applicant repeats and incorporates by reference its answers to Paragraphs 1-16 above.

18. Answering the allegations of Paragraph 18 of the Notice, Applicant denies the allegations therein.

19. Answering the allegations of Paragraph 19 of the Notice, Applicant denies the allegations therein.

20. Answering the allegations of Paragraph 20 of the Notice, Applicant denies the allegations therein.

21. Answering the allegations of Paragraph 21 of the Notice, Applicant denies the allegations therein.

22. Answering the allegations of Paragraph 22 of the Notice, Applicant denies the allegations therein.

23. Answering the allegations of Paragraph 23 of the Notice, Applicant repeats and incorporates by reference its answers to Paragraphs 1-22 above.

24. Answering the allegations of Paragraph 24 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies the allegations therein.

25. Answering the allegations of Paragraph 25 of the Notice, Applicant is without information or belief sufficient to admit or deny the allegations of said paragraph and, on that basis, denies the allegations therein.

26. Answering the allegations of Paragraph 26 of the Notice, Applicant denies the allegations therein.

27. Answering the allegations of Paragraph 27 of the Notice, Applicant denies the allegations therein.

28. Answering the allegations of Paragraph 28 of the Notice, Applicant denies the allegations therein.

29. Answering the allegations of Paragraph 29 of the Notice, Applicant denies the allegations therein.

30. Answering the allegations of Paragraph 30 of the Notice, Applicant denies the allegations therein.

31. Answering the allegations of Paragraph 31 of the Notice, Applicant denies the allegations therein.

Prayer for Relief. Answering the prayer for relief, Applicant denies that Opposer is entitled to any relief.

AFFRIMATIVE DEFENSES

Applicant has not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to raise any affirmative defenses as they become known to it through discovery in this matter. Applicant also reserves the right to amend its Answers and/or to add or delete affirmative defenses that it determines are applicable or not applicable during the course of subsequent discovery.

PRAYER FOR RELIEF

WHEREFORE, Applicant requests dismissal of the Notice of Opposition with prejudice and that Applicant's Application continue to registration forthwith.

Respectfully submitted,

Date: May 6, 2019



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served upon counsel for Opposer by forwarding said copy on May 6, 2019, by email to:

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