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

Proceeding	91250779
Party	Defendant BJ2, LLC
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Date	02/12/2020
Attachments	Answer BREATHERIGHT send.pdf(76802 bytes)

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

BLOCK DRUG COMPANY, INC.,)	
)	
)	Opposition No. 91250779
Opposer,)	Serial No. 88190770
)	Mark: BREATHE RIGHT
v.)	
)	
BJ2 LLC,)	
)	
Applicant,)	
)	
)	

ANSWER TO NOTICE OF OPPOSITION

Applicant BJ2 LLC (“Applicant”), by and through its attorney, hereby answers the Notice of Opposition (the “Opposition”) filed by BLOCK DRUG COMPANY, INC., (“Opposer”) as follows. To the extent not explicitly admitted, all allegations in the Opposition are denied. Applicant denies the allegations of the first unnumbered paragraph.

1. Applicant admits that Opposer is the listed owner of Registration Numbers 78961893 and 77500779 for goods identified in such registrations as “external nasal dilator(s)” in International Class 10. Applicant is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 1 of the Opposition; therefore, Applicant specifically denies the same.

2. Applicant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 2 of the Opposition; therefore, Applicant specifically denies the same.

3. Applicant admits the allegations in Paragraph 3 of the Opposition.

4. Applicant admits the allegations in Paragraph 4 of the Opposition.

5. Applicant is without sufficient knowledge or information to admit or deny the

allegations in Paragraph 5 of the Opposition; therefore, Applicant specifically denies the same.

6. Applicant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 6 of the Opposition; therefore, Applicant specifically denies the same.

7. Applicant admits that Opposer is the listed owner of Registration Number 3450936 for goods identified in such registration as “external nasal dilator” in International Class 10 and “Throat spray product designed to reduce or eliminate snoring” in International Class 5. Applicant is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 7 of the Opposition; therefore, Applicant specifically denies the same.

8. Applicant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 8 of the Opposition; therefore, Applicant specifically denies the same.

9. Paragraph 9 of the Opposition contains legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations and/or legal conclusions contained in Paragraph 9 of the Opposition. Further answering, Applicant states that application Serial No. 88190770 speaks for itself.

10. Paragraph 10 of the Opposition contains legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations and/or legal conclusions contained in Paragraph 10 of the Opposition.

11. Applicant admits that Opposer is the listed owner of Registration Numbers 78961893 and 77500779 for goods identified in such registrations as “external nasal dilator(s)” in International Class 10. Applicant is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 11 of the Opposition; therefore, Applicant specifically denies the same.

12. Applicant denies the allegations in Paragraph 12 of the Opposition.

13. Paragraph 13 of the Opposition contains legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations and/or legal conclusions contained in Paragraph 13 of the Opposition.

AFFIRMATIVE DEFENSES

Applicant in no way concedes that it bears the burden of proof or persuasion on any of these issues. Applicant expressly reserves the right to supplement, modify, plead, or assert any and all additional affirmative and other defenses of which it becomes aware during the pendency of this matter. As and for its affirmative and other defenses, Applicant states as follows:

FIRST AFFIRMATIVE DEFENSE

The Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Due to the differences in the channels of trade between the goods, the large cost differential between the goods, and the difference between the prototypical consumers for the respective goods, there is no likelihood of confusion, mistake, or deception between Opposer's mark and Applicant's mark.

THIRD AFFIRMATIVE DEFENSE

Opposer will not be damaged by the registration of Applicant's trademark.

FOURTH AFFIRMATIVE DEFENSE

Opposer's claims fail to satisfy the standard for confusion, mistake, or deception as set forth in 15 U.S.C. § 1052(d).

WHEREFORE, Applicant respectfully prays that this Opposition be dismissed with prejudice, that registration to Applicant be granted together with such other relief that the Board may deem appropriate.

Respectfully Submitted,

Dated: February 12, 2020

/A. Joseph Bulua/

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Attorney for Applicant BJ2 LLC

Certificate of Electronic Filing, and Service

I hereby certify that a true and complete copy of the foregoing Answer was filed/submitted with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trial and Appeals (ESTTA), and was served on Opposer via email to counsel of record, Paul C. Llewellyn of Arnold & Porter Kaye Scholer LLP at Paul.Llewellyn@arnoldporter.com, on the date set forth above.

/A. Joseph Bulua/