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

Proceeding	91253873
Party	Defendant Hair Codes
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Submission	Answer
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Date	05/18/2020
Attachments	Answer_Hair Codes.pdf(154833 bytes )

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

The Procter & Gamble Company,  
  
Opposer,  
  
v.  
  
Hair Codes LLC,  
  
Applicant.

Opposition No. 91253873  
  
Mark: HAIR CODES  
  
U.S. Application Serial No. 88524984  
  
Application Filing Date: July 19, 2019

**ANSWER AND AFFIRMATIVE DEFENSES**

Applicant Hair Codes LLC, a Florida limited liability company (“Applicant”), by and through undersigned counsel, hereby files its Answer and Affirmative Defenses to the Notice of Opposition (the “Opposition”) filed by The Procter & Gamble Company (“Opposer”) as set forth below. Unless specifically admitted, Applicant denies each of the allegations of Opposer’s Opposition.

**ANSWER**

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 and, on that basis, denies them.
2. Applicant denies the allegations in Paragraphs 10, 11, 12, and 13.

**AFFIRMATIVE DEFENSES**

As and for its affirmative defenses, Applicant states as follows:

**First Affirmative Defense**

### *Abandonment*

3. As its First Affirmative Defense, Applicant pleads that Opposer abandoned use of its HAIR CODE Mark in connection with some or all of the goods and services identified in U.S. Application Serial No. 88029668, namely, hair care preparations in International Class 003 and computer application software for mobile phones, namely, software for providing hair care related questions to help consumers determine the type of products best suited to their individual needs and preferences in International Class 009. *See Lens.com Inc. v. 1-800 Contacts Inc.*, 686 F.3d 1376, 103 USPQ2d 1672, 1676-77 (Fed. Cir. 2012) (software that is merely a conduit through which online retail services are rendered is not "in use in commerce" in association with software); *Paramount Pictures Corp. v. White*, 31 USPQ2d 1768, 1769 (TTAB 1994) ("use in commerce" involves the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark), *aff'd unpub'd*, 108 F.3d 1392 (Fed. Cir. 1997). Specifically, the evidence cited to and provided by Opposer in its Notice of Opposition shows that the quiz which consumers take is a computer application software, but not that any hair care preparations are actually sold by Opposer under its mark. As such, upon information and belief, Opposer has abandoned use of the HAIR CODE Mark in connection with at least the goods listed in International Class 003.

### **Second Affirmative Defense**

#### *Unclean Hands and Bad Faith*

4. As its Second Affirmative Defense, Applicant pleads that Opposer's claim for relief is barred under the doctrine of unclean hands. The frivolous allegations contained in the Notice of Opposition are nothing more than an attempt by Opposer, a multinational conglomerate, to undermine and stifle Applicant's small, budding business.

**WHEREFORE**, Applicant respectfully requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and issue the registration for Applicant's Mark.

Dated: May 18, 2020

Respectfully submitted,

/s/ Mark C. Johnson  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer and Affirmative Defenses has been served on counsel of record for Opposer by forwarding said copy on May 18, 2020, via email to: Emily Judge, Esq., The Procter & Gamble Company, One Procter & Gamble Plaza, C9, Cincinnati, OH 45202 ([pgtrademarks.im@pg.com](mailto:pgtrademarks.im@pg.com)).

Dated: May 18, 2020

Respectfully submitted,

/s/ Mark C. Johnson  
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