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

Proceeding	91255290
Party	Defendant Celestron Acquisition, LLC
Correspondence Address	CHRISTINA S. LOZA LOZA & LOZA, LLP 305 NORTH 2ND AVENUE #127 UPLAND, CA 91786 tina-pto@lozaip.com no phone number provided
Submission	Answer
Filer's Name	Christina S. Loza
Filer's email	tina-pto@lozaip.com
Signature	/Christina S. Loza/
Date	05/22/2020
Attachments	CELEST-404_Answer.pdf(73152 bytes)

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

EXPLORE SCIENTIFIC, LLC,
JOURNEYNORTH, INC., JINGHUA
OPTICS AND ELECTRONICS CO., LTD

Opposers,

v.

CELESTRON ACQUISITION, LLC,

Applicant.

Application No.: 88/657,434

Mark: 

Date Filed: October 16, 2019

Opposition No.: 91255290

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Celestron Acquisition, LLC (“Applicant” or “Celestron”) for its answer to the Notice of Opposition, filed by Opposers, Explore Scientific, LLC, Journeynorth, Inc., Jinghua Optics and Electronics Co., Ltd (“Opposers”) against Applicant’s Trademark Application No.

88/88/657,434 for the design mark,  (“Applicant’s Mark”), filed on October 16, 2019, pleads and avers as follows:

1. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation.
2. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation.
3. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation.

4. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation.

5. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation generally.

6. At this time, Applicant has insufficient information to either admit or deny this allegation and therefore denies this allegation generally.

7. Admit.

8. Admit.

9. Deny.

10. Deny.

11. Deny.

12. Deny.

13. Deny.

14. Deny.

15. Deny.

16. Deny.

17. Deny.

18. Deny.

19. Deny.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(NO LIKELIHOOD OF CONFUSION)

1. There is no likelihood of confusion, mistake or deception on the part of

consumers arising out of the conduct alleged in the Opposition.

SECOND AFFIRMATIVE DEFENSE


(NO CONFUSION AS TO SOURCE OR AFFILIATION)

2. Ordinary consumers will not confuse or conclude that the parties' goods and services share a common source or affiliation or connection.

THIRD AFFIRMATIVE DEFENSE


(ESTOPPEL, ACQUIESCENCE, AND WAIVER)


3. Opposer's claims are barred, in whole or in part, by the doctrines of estoppel, acquiescence and waiver.


4. Applicant has a number of other already registered, long-standing STARSENSE marks, EXPLOR- formative marks, and marks with similar design features to the allegedly infringing design feature, ; including the following:

a. STARSENSE EXPLORER (Registration No. 6,015,321) registered on March 17, 2020 and in use since at least as early as January 13, 2020;

b. EXPLORASCOPE (Registration No. 4,700,652) registered on March 10, 2015 and in use since at least as early as August 31, 2014;





c.  **CELESTRON** (Registration No. 4,369,087) registered on July 16, 2013 and in use at least as early as May 20, 2011;

d.  **CELESTRON** (Registration No. 3,005,39) registered on October 11, 2005 and in use since at least as early as August 15, 2002; and

e.  (Registration No. 2,423,081) registered on January 23, 2001 and in use since at least as early as January 23, 2001.

FOURTH AFFIRMATIVE DEFENSE

(LACHES)

5. Opposer's claims are barred, in whole or in part, by the doctrine of laches.
6. Applicant has a number of other already registered, long-standing STARSENSE marks, EXPLOR- formative marks, and marks with similar design features to the allegedly infringing design feature, ; including the following:
 - a. STARSENSE EXPLORER (Registration No. 6,015,321) registered on March 17, 2020 and in use since at least as early as January 13, 2020
 - b. EXPLORASCOPE (Registration No. 4,700,652) registered on March 10, 2015 and in use since at least as early as August 31, 2014;
 - c.  **CELESTRON** (Registration No. 4,369,087) registered on July 16, 2013 and in use at least as early as May 20, 2011;
 - d.  **CELESTRON** (Registration No. 3,005,39) registered on October 11, 2005 and in use since at least as early as August 15, 2002; and
 - e.  (Registration No. 2,423,081) registered on January 23, 2001 and in use since at least as early as January 23, 2001.

FOURTH AFFIRMATIVE DEFENSE

(THIRD PARTY REGISTRATIONS)

7. The word “EXPLORE” is common in International Class 009 and many third-party registrations and uses now exist and have existed of EXPLORE-containing marks in this field. There are at least 60 marks that use EXPLORE in connection with IC 009 goods. There are also over 350 live EXPLOR- formative marks currently pending or registered before the United States Patent and Trademark Office.

RESERVATION OF RIGHTS

8. Respondent reserves all affirmative defenses, under Rule 8(c) of the Federal Rules of Civil Procedure, the trademark laws of the United States and any other defenses, at law or equity, that may now or in the future be available based on discovery or any other factual investigation concerning this case.

Respectfully submitted,

Dated: May 22, 2020

Loza & Loza, LLP

/Christina S. Loza/

Christina S. Loza

Loza & Loza, LLP

305 N. Second Ave., #127

Upland, CA 91786

Telephone: (949) 705-6777

Fax: (949) 705-6777

Email: tina-pto@lozaip.com

Attorney for Applicant, Celestron Acquisition, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER** was served on May 21, 2020 via electronic mail to:

James L. Neal
5403 Braebourne Road
Rogers, AR 72758
jneal11@msn.com

Dated: May 22, 2020

/shirley hsu/
Shirley Hsu