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

Proceeding	91255953
Party	Defendant California Exotic Novelties, LLC
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Submission	Answer
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Date	06/30/2020
Attachments	HYPE Answer.pdf(41342 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD

Applicant: California Exotic Novelties, LLC
Serial No.: 88820622
Mark: HYPE
Application Filed: March 4, 2020

<p>HYPER ICE, INC.</p> <p>Opposer,</p> <p>v.</p> <p>CALIFORNIA EXOTIC NOVELTIES, LLC,</p> <p>Applicant.</p>	<p>Opposition No.: 91255953</p> <p>ANSWER OF APPLICANT CALIFORNIA EXOTIC NOVELTIES, LLC</p>
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Applicant California Exotic Novelties, LLC (“Applicant” or “CEN”), in response to the Notice of Opposition filed by Opposer Hyper Ice, Inc. (“Opposer” or “HYPER”), by and through its undersigned counsel, hereby answers the Notice of Opposition as follows:

ANSWER

1. Responding to paragraph 1 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis DENIES each and every allegation contained therein.

2. Applicant ADMITS the allegations contained in paragraph 2 of the Notice of Opposition.

3. Applicant ADMITS the allegations contained in paragraph 3 of the Notice of Opposition.

4. Applicant ADMITS the allegations contained in paragraph 4 of the Notice of Opposition.

5. Responding to paragraph 5 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and on that basis DENIES each and every allegation contained therein.

6. Applicant DENIES the allegations contained in paragraph 6 of the Notice of Opposition.

7. Applicant DENIES the allegations contained in paragraph 7 of the Notice of Opposition.

8. Applicant DENIES the allegations contained in paragraph 8 of the Notice of Opposition.

9. Applicant DENIES the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant DENIES the allegations contained in paragraph 10 of the Notice of Opposition.

11. Applicant DENIES the allegations contained in paragraph 11 of the Notice of Opposition.

12. Applicant DENIES the allegations contained in paragraph 12 of the Notice of Opposition.

DEFENSES

Further answering the Notice of Opposition, Applicant asserts the following defenses, without assuming the burden of proof when such burden would otherwise be on the Opposer:

FIRST DEFENSE

1. As and for a separate defense, Opposer fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. As and for a separate defense, Applicant alleges that the “HYPER” portion of Opposer’s HYPER Marks, contained within the alleged trademark registrations cited in Opposer’s Notice of Opposition, have been used by various third parties for various goods and services and, as such, are “weak” marks at best.

THIRD DEFENSE

3. As and for a separate defense, Opposer does not own a “HYPE” trademark, and/or does not have any exclusive right to the word “HYPE.”

FOURTH DEFENSE

4. As and for a separate defense, Opposer’s claims are barred by the equitable doctrines and affirmative defenses of laches, waiver and estoppel, as applicable.

FIFTH DEFENSE

5. As and for a separate defense, Opposer’s alleged mark is not likely to be damaged by continued registration and use of Applicant’s mark.

SIXTH DEFENSE

6. As and for a separate defense, Opposer’s Notice of Opposition should be denied based upon fair use.

SEVENTH DEFENSE

7. As and for a separate defense, Applicant’s mark and Opposer’s marks are not likely to cause confusion, mistake, or deception among purchasers as to the source of Opposer’s and Applicant’s respective goods and/or services.

EIGHTH DEFENSE

8. As and for a separate defense, Applicant’s goods and Opposer’s goods are not similar and are unrelated.

NINTH DEFENSE

9. Applicant currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Applicant reserves the right to assert additional defenses in the event that discovery indicates it would be appropriate.

WHEREFORE, Applicant requests that the claims alleged by Opposer be dismissed and that registration of Applicant’s U.S. Trademark Application Serial No. 88820622 be allowed.

Date: June 30, 2020

Respectfully submitted,

California Exotic Novelties, LLC, by its counsel,
Lipsitz Green Scime Cambria LLC

By: /Jonathan W. Brown/

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CERTIFICATE OF SERVICE

I, Jonathan W. Brown, hereby certify that a true and complete copy of the foregoing Answer of Applicant California Exotic Novelties, LLC has been served on counsel for Opposer on this 30^h day of June, 2020, via email to:

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Dated: June 30, 2020

/Jonathan W. Brown/
Jonathan W. Brown