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

Proceeding	91263808
Party	Defendant SMART PERFECT LIMITED
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Attachments	Answer to Notice of Opposition.pdf(112563 bytes )

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

MONSTER ENERGY COMPANY,

Opposer,

vs.

SMART PERFECT LIMITED LLC,

Applicant.

Opposition Proceeding No.: 91263808

Serial No.: 88561901

**ANSWER AND AFFIRMATIVE DEFENSES OF APPLICANT**

SMART PERFECT LIMITED LLC (“Applicant”), by and through its attorneys, the Bayramoglu Law Offices LLC, hereby answers the Notice of Opposition (the “Opposition”) filed by MONSTER ENERGY COMPANY (“Opposer”) in the above-referenced opposition proceeding as follows:

To the extent the cover sheet of the Opposition is deemed to contain allegations requiring a response, Applicant denies these allegations. To the extent the unnumbered paragraphs in the Opposition are deemed to contain allegations requiring a response, Applicant denies these allegations. To the extent not explicitly admitted, all allegations in the Opposition are denied.

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## ANSWER

1. Applicant denies the allegations of Paragraph 1 of the Opposition insofar as the August 2, 2019 trademark application listed “trunks being luggage and suitcases” in International Class 018 and “trunks being clothing” in International Class 025, and admits the rest. Applicant admits the goods listed in Paragraph 1 represent the present status of the goods in Application No. 88561901.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Opposition and, on that basis, denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Opposition and, on that basis, denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Opposition and, on that basis, denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Opposition and, on that basis, denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Opposition and, on that basis, denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Opposition and, on that basis, denies the same.

8. Applicant admits the allegations in Paragraph 8 insofar that Opposer owns and is relying on the listed registrations. To the extent there are any other allegations that need responses in this Paragraph, Applicant denies such allegations.

9. Applicant admits the allegations of Paragraph 9 of the Opposition.

10. Applicant admits the allegations of Paragraph 10 of the Opposition.

11. Applicant admits the allegations of Paragraph 11 of the Opposition.

12. Applicant admits the allegations of Paragraph 12 of the Opposition.

13. Applicant denies the allegations of Paragraph 13 of the Opposition insofar as Registration No. 5551230 lists “bandanas; headgear, namely, hats and beanies” in International Class 025 and “athlete development program, namely, athlete training and mentoring in the field of . . . martial arts, auto racing” in International Class 041, and admits the rest.

14. Applicant admits the allegations of Paragraph 14 of the Opposition.

15. Applicant admits the allegations of Paragraph 15 of the Opposition.

16. Applicant denies the allegations of Paragraph 16 of the Opposition insofar as Registration No. 5813698 has a registration date prior to the first use date of Serial No. 88561901 (“Applicant’s Mark”), and admits the rest.

17. Applicant admits the allegations of Paragraph 17 of the Opposition.

18. Applicant admits the allegations of Paragraph 18 of the Opposition.

19. Applicant admits the allegations of Paragraph 19 of the Opposition.

20. Applicant admits the allegations of Paragraph 20 of the Opposition.

21. Applicant admits the allegations of Paragraph 21 of the Opposition.

22. Applicant admits the allegations of Paragraph 22 of the Opposition.

23. Applicant admits the allegations of Paragraph 23 of the Opposition.

24. Applicant admits the allegations of Paragraph 24 of the Opposition.

25. Applicant admits the allegations of Paragraph 25 of the Opposition.

26. Applicant admits the allegations of Paragraph 26 of the Opposition.

27. Applicant admits the allegations of Paragraph 27 of the Opposition.

28. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Opposition and, on that basis, denies the same.

29. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Opposition and, on that basis, denies the same.

30. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Opposition and, on that basis, denies the same.

31. Applicant admits the allegations of Paragraph 31 of the Opposition.

32. Applicant denies the allegations of Paragraph 32 of the Opposition.

33. Applicant denies the allegations of Paragraph 33 of the Opposition.

34. Applicant denies the allegations of Paragraph 34 of the Opposition.

35. Applicant denies the allegations of Paragraph 35 of the Opposition.

### **AFFIRMATIVE DEFENSES**

Applicant undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. Applicant expressly reserves the right to plead additional affirmative and other defenses should such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicant states as follows:

#### **First Affirmative Defense**

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

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### **Second Affirmative Defense**

2. There is no likelihood of confusion, mistake or deception between Opposer's use of Opposer's marks on Opposer's goods and services and Applicant's use of Applicant's mark on Applicant's goods because, inter alia, the Applicant's mark is not similar to Opposer's marks.

### **Third Affirmative Defense**

3. There is no likelihood of confusion, mistake or deception between Opposer's use of Opposer's marks on Opposer's goods and services and Applicant's use of Applicant's mark on Applicant's goods because, inter alia, ordinary consumers will not confuse or conclude that the parties' goods and services share a common source or affiliation or connection.

### **Fourth Affirmative Defense**

4. Applicant alleges on information and belief that as a result of its own acts and omissions, Opposer has waived any right to pursue its Opposition.

### **Fifth Affirmative Defense**

5. Applicant alleges on information and belief that the Opposition is barred by the doctrine of unclean hands.

**WHEREFORE**, Applicant prays that the Opposition be denied with prejudice, in its entirety.

**WHEREFORE**, Applicant requests such other or additional relief the Board may deem appropriate.

Dated: August 31, 2020

Respectfully submitted,

**BAYRAMOGLU LAW OFFICES LLC**

By: /s/ David Silver

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SMART PERFECT LIMITED LLC

## **CERTIFICATE OF SERVICE**

I, David Silver, hereby certify that on August 31, 2020, I served a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES OF SMART PERFECT LIMITED LLC by electronic mail upon:

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