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

Proceeding no.	91281314
Party	Defendant Mojo LLC
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Date	04/18/2023
Attachments	Answer to Notice of Opposition MOJO MORE JOY Ser. No. 90584912.pdf(101961 bytes)

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

Jean Patou,

Opposer,

v.

Mojo LLC,

Applicant.

Opposition No.: 91281314
Application Ser. No.: 90584912
Mark: MOJO MORE JOY
Filing Date: March 17, 2021

**ANSWER AND AFFIRMATIVE AND AMPLIFYING DEFENSES
TO NOTICE OF OPPOSITION**

Applicant, Mojo LLC (“Mojo”), by and through its undersigned counsel of record, hereby provides its Answer and Affirmative and Amplifying Defenses to the Notice of Opposition filed by Opposer Jean Patou as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits the allegation contained therein.

2. Answering paragraph 2 of the Notice of Opposition, Applicant admits the allegation contained therein.

3. Answering paragraph 3 of the Notice of Opposition, Applicant admits the allegation contained therein.

4. Answering paragraph 4 of the Notice of Opposition, Applicant admits the allegation contained therein.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have

sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations

8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations

9. Answering paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

10. Answering paragraph 10 of the Notice of Opposition, Applicant admits the allegation contained therein.

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies the allegation contained therein.

12. Answering paragraph 12 of the Notice of Opposition, Applicant denies the allegation contained therein.

Mojo denies that Opposer is entitled to any of the relief requested in the Notice of Opposition.

GENERAL DENIALS

Except as specifically admitted herein, Mojo denies each and every allegation contained in the Notice of Opposition.

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AFFIRMATIVE DEFENSES AND AMPLIFYING DENIALS

Mojo asserts the following affirmative defenses to the Notice of Opposition and the claims asserted therein. Mojo specifically incorporates into these Affirmative Defenses and Amplifying Denials the responses to the preceding paragraphs as fully if set forth herein.

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Opposer's claims made by Opposer is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrines of waiver and/or acquiescence.

FIFTH AFFIRMATIVE DEFENSE

Opposer's trademark rights, if any, have been abandoned due to Opposer's failure to police its mark.

SIXTH AFFIRMATIVE DEFENSE

For reasons similar to those set forth in relation to Opposer's laches, acquiescence and/or waiver, Opposer's claims for relief are barred by the doctrine of equitable estoppel.

SIXTH AFFIRMATIVE DEFENSE

One or more of the claims made by Opposer is barred by the doctrine of fraud.

SEVENTH AFFIRMATIVE DEFENSE AND AMPLIFYING DENIALS

In accordance with the provisions of TBMP § 318 and Fed. R. Civ. P. 11, at the time of the filing of this Answer and Affirmative Defenses and Amplifying Denials, all possible affirmative

defenses may not have been alleged inasmuch as sufficient facts and relevant information has not been available after reasonable inquiry under the circumstances, and therefore Mojo asserts reserves the right to Amend this Answer and Affirmative Defenses and Amplifying Denials to allege additional affirmative defenses if subsequent investigation and discovery so warrants.

FURTHERMORE, pursuant to TBMP § 311.02(d), Mojo sets forth the following affirmative pleadings in order to amplify its denials, the affirmative defenses set forth above, and Mojo's other defenses:

A. Applicant's Mark, MOJO MORE JOY, and Opposer's JOY Marks (as defined in the Notice of Opposition), are not confusingly similar and can peacefully coexist in the marketplace.

B. There are currently over 3,940 live pending applications and registrations for marks containing the term JOY.

C. There are 156 marks containing the term JOY in Class 3. Among these 156 marks in Class 3, there are at least 60 third-party marks for goods identical and/or highly related to those of opposer.

D. If the foregoing JOY-formative marks can co-exist on the trademark register, then Applicant's Mark can exist as well.

E. The number of third-party registered and/or allowed marks all owned by different entities indicates that JOY is commonly used as applied to goods in Class 3, namely body topicals, lotions, and related goods.

F. Given the number of third-party and allowed applications for JOY-formative marks for identical and/or highly related goods, consumers are conditioned to look for differences between JOY-formative marks for identical/highly related goods to determine the source of a given

product and therefore are less likely to be confused.

G. Given the number of third-party registrations and allowed applications for JOY-formative marks for identical and/or highly related goods, consumers can readily differentiate between Applicant's Mark and Opposer's JOY Marks.

H. In light of the number of third-party registrations and allowed applications for JOY-formative marks for identical and/or highly related goods, Opposer's Marks are entitled to only a very narrow scope of protection.

I. Applicant's Mark is not likely to cause confusion, mistake, or deception among purchasers as to the source of Opposer's and Applicant's respective goods.

J. Opposer's is not likely to be damaged by registration and use of Applicant's Mark.

WHEREFORE, Mojo prays that the Board deny the Notice of Opposition in its entirety.

Dated: April 18, 2023

HOWARD & HOWARD ATTORNEYS PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing **ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE AND AMPLIFYING DEFENSES** is being served on opposing counsel of record by forwarding said copy on April 18,2023 via electronic mail addressed to:

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