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

Proceeding no.	91286735
Party	Defendant Lynn S. Polley-Hoffman and Nancy Brenner
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Submission	Answer
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Signature	/Lynn S. Polley-Hoffman/ /Nancy Brenner/
Date	11/07/2023
Attachments	2023 1107 TTAB Chompin Gator Amended Answer 11.7.2023[32522].pdf(198939 bytes )

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

Proceeding	Opposition No. 91286735 Serial No. 97586456
Party	Defendant Lynn S. Polley-Hoffman and Nancy Brenner
Correspondence Address	<a href="mailto:lynnpolley@hotmail.com">lynnpolley@hotmail.com</a> nbrenner@seabridgeus.com
Submission	Amended Answer and Affirmative Defenses
Filer's Name	Lynn Polley-Hoffman and Nancy A. Brenner
Filer's email	<a href="mailto:lynnpolley@hotmail.com">lynnpolley@hotmail.com</a> ; nbrenner@seabridgeus.com
Signature	/Lynn S. Polley-Hoffman/ and /Nancy A. Brenner/
Date	11/3/2023
Attachments	Amended Answer and Affirmative Defenses to Notice of Opposition -

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

THE UNIVERSITY ATHLETIC ASSOC, INC.

Opposer,

Proceeding No. 91286735

v.

AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES

LYNN S. POLLEY-HOFFMAN and  
NANCY BRENNER,

Applicants

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TO THE COMMISSIONER FOR TRADEMARKS  
TRADEMARK TRIAL AND APPEAL BOARD

In response to the Notice of Opposition filed by The University Athletic Association, Inc. ("Opposer") in this matter, Applicants file this Amended Answer and respond and answer as follows:

1. Applicants admit the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicants admit the allegations in Paragraph 2 of the Notice of Opposition
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 3 of the Notice of Opposition and therefore deny the same.
4. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 4 of the Notice of Opposition and therefore deny the same.
5. Applicants admit the allegations in Paragraph 5 of the Notice of Opposition.
6. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 6 of the Notice of Opposition and therefore deny the same.
7. Applicants admit the allegations in Paragraph 7 of the Notice of Opposition.
8. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 8 of the Notice of Opposition and therefore deny the same.
9. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 9 of the Notice of Opposition and therefore deny

the same.

10. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 10 of the Notice of Opposition and therefore deny the same.

11. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by the first sentence of Paragraph 11 of the Notice of Opposition as to “other registrations and common law marks” and therefore deny the same. Applicants deny the allegations in Paragraph 11 of the Notice of Opposition as to the marks GATORS 6,604,684; GATORS 4,521,534; and GATORS 2,206,967 because the registered marks consist of the generic term "Gators" which is in the common domain and is not protectable; and because Opposer has abandoned those marks by failing to enforce them against other third parties. Applicants admit the remainder of the allegations of Paragraph 11 as to the remainder of Opposer’s registered marks as listed.

12. Applicants deny the allegations in Paragraph 12 of the Notice of Opposition because Opposer has no common law rights to “Gator Chomp” and in any event, has failed to enforce any such rights against third parties.

13. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 13 of the Notice of Opposition and therefore deny the same.

14. Applicants deny the allegations in Paragraph 14 of the Notice of Opposition as to

the marks GATORS 6,604,684; GATORS 4,521,534; and GATORS 2,206,967 because those registered marks consist of the generic word "Gators" which is widely used in the common domain and is not protectable; and because Opposer has abandoned those marks by failing to enforce them against other third parties who use the word "Gators" or "Gator" in their marks, including in registered trademarks in the sale of goods in Class 21 and/or Class 25.

### **COUNT I - LIKELIHOOD OF CONFUSION**

15. Applicants hereby incorporate their previous responses to Paragraphs 1-14 of the Notice of Opposition.

16. Applicants deny the allegations in Paragraph 16 of the Notice of Opposition on the grounds that there is no likelihood of confusion between the applied-for-mark and Opposer's registered marks because they are not substantially similar, and because any possibility of confusion between the applied-for-mark and Opposer's registered marks is negated by widespread use of the word "Gators" or "Gator" by third parties in sale of goods in Class 21 and/or Class 25.

17. Applicants deny the allegations in Paragraph 17 of the Notice of Opposition.

18. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations stated by Paragraph 18 of the Notice of Opposition and therefore deny the same.

19. Applicants deny the allegations in Paragraph 19 of the Notice of Opposition on the grounds that there is no likelihood of confusion between the applied-for-mark and Opposer's registered marks because they are not substantially similar, and because any possibility of

confusion between the applied-for-mark and Opposer's registered marks is negated by widespread use of the word "Gators" or "Gator" by third parties in sale of goods in Class 21 and/or Class 25.

**COUNT II - MATTER WHICH MAY FALSELY SUGGEST A CONNECTION**

20. Applicants hereby incorporate their previous responses to Paragraphs 1-14 of the Notice of Opposition.

21. Applicants deny the allegations in Paragraph 21 of the Notice of Opposition.

22. Applicants deny the allegations in Paragraph 22 of the Notice of Opposition.

23. Applicants admit the allegations in Paragraph 23 of the Notice of Opposition.

24. Applicants deny the allegations in Paragraph 24 of the Notice of Opposition.

25. Applicants deny the allegations in Paragraph 25 of the Notice of Opposition.

26. Applicants deny the allegations in Paragraph 26 of the Notice of Opposition.

**COUNT III – LACK OF BONA FIDE INTENT TO USE THE MARK**

27. Applicants hereby incorporate their previous responses to Paragraphs 1-14 of the Notice of Opposition.

28. Applicants admit the allegations in Paragraph 28 of the Notice of Opposition.

29. Applicants deny the allegations in Paragraph 29 of the Notice of Opposition.

30. Applicants deny the allegations in Paragraph 30 of the Notice of Opposition.

31. Applicants deny the allegations in Paragraph 31 of the Notice of Opposition.

**GENERAL DENIAL**

32. Applicants deny that Opposer will suffer any harm from the registration of the

applied-for-mark and further deny the remaining allegations and statements in the Notice of Opposition to the extent not admitted above.

### **AFFIRMATIVE DEFENSES**

#### Applicants' First Affirmative Defense-Equitable Estoppel

Opposer is estopped from opposing the applied-for mark because Opposer has allowed other third parties to register marks without opposition that are as similar or even more similar to Opposer's registered mark and by failing to enjoin other third parties from using the word "GATORS" or "GATOR" in connection with the sale of goods in Class 21 and Class 25. Applicants were misled by Opposer's conduct to believe that Opposer did not intend to enforce its registered marks GATORS 6,604,684; GATORS 4,521,534; and GATORS 2,206,967 and/or did not claim any rights to ownership of the word "Gators" in connection with the sales of goods in Class 21 and Class 25; (2) Applicants relied on that conduct; and (3) Applicants will be materially prejudiced if Opposer is permitted to enforce its trademark rights and to block registration of the applied-for mark by Applicants.

#### Applicants' Second Affirmative Defense-Abandonment

Opposer has abandon its rights to the registered marks the marks GATORS 6,604,684; GATORS 4,521,534; and GATORS 2,206,967 by its failure to police or enforce any rights it claims to the word "GATORS" either alone or connected to other words or to assert rights to the word "GATORS" in connection with the sales of goods in Class 21 and Class 25. Applicants



reasonably relied on that conduct.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition filed herein be dismissed and judgment be entered in favor of Applicant.

Respectfully submitted this 3rd day of November, 2023.

/s/ Lynn S. Polley-Hoffman

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/s/ Nancy A. Brenner

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### **CERTIFICATE OF FILING**

I hereby certify that this ANSWER and AFFIRMATIVE DEFENSES in Proceeding No. 91286735 is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the U.S. Patent and Trademark Office on the below date.

Date: November 7, 2023

/s/ Lynn S. Polley-Hoffman

## CERTIFICATION OF SERVICE

Consistent with the 37 CFR § 2.119, the undersigned hereby certifies that the above ANSWER AND AFFIRMATIVE DEFENSES has been served via email on the following persons via e-mail:

Meredith Fran Mendez  
John Cyril Malloy, III and  
Kelly Marie Malloy

Primary emails: [jcmalloy@malloylaw.com](mailto:jcmalloy@malloylaw.com); [mmendez@malloylaw.com](mailto:mmendez@malloylaw.com); and [kmalloy@malloylaw.com](mailto:kmalloy@malloylaw.com).

Date: November 7, 2023

/s/ Lynn S. Polley-Hoffman