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

Proceeding	91268856
Party	Defendant Yeezy LLC
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Date	06/29/2021
Attachments	Applicant Answer - 6.29.21.pdf(418089 bytes )

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

In the Matter of Trademark Application  
Serial No. 88/746,444

Mark: 

WALMART APOLLO, LLC,

Opposer,


-against-

YEEZY LLC,

Applicant.


Opposition No. 91/268,856


**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES**

Applicant Yeezy LLC (“Applicant”), by its attorneys, Pryor Cashman LLP, as and for its Answer and Affirmative Defenses to the claims asserted in the Notice of Opposition (“Opposition”) filed by Walmart Apollo, LLC (“Opposer”), denies that Opposer will be damaged by the registration of Applicant’s design mark  (“Applicant’s Mark”), as set forth under Application Serial No. 88/746,444 (the “Application”). The Opposition’s overreaching allegations demonstrate Opposer’s attempt to extend its “Spark Design” well beyond its federal and common law trademark rights. Opposer certainly knows, as does the consuming public, that the last thing Applicant wants to do is associate itself with Opposer. That the Opposition sets forth allegations that Applicant seeks to mislead consumers into mistakenly believing that the parties are associated or that Applicant’s goods and services emanate from Opposer is, simply put, absurd.

With respect to the specific allegations in the Opposition, Applicant respectfully responds as follows:

1. Applicant responds that the *undefined* “Spark Design” identified in Paragraph 1 of

the Opposition, portrayed as , is not incorporated in all of the alleged marks in Exhibit A of the Opposition. Specifically, Exhibit A of the Opposition identifies the following examples of

the purported “Opposer’s Mark” that do not incorporate the  design, which Opposer calls the “Spark Design”:



SN: 88358410.



RN: 6011727  
SN: 88418933  
Disclaimer: "PICKUP"



RN: 5840587  
SN: 87888344  
Disclaimer: "PROTECT"



RN: 5946742  
SN: 88011366  
Disclaimer: "PROTECT"



RN: 5694853  
SN: 87795458



RN: 5522881  
SN: 87627789



RN: 5884241  
SN: 88367841



RN: 6217117  
SN: 87950231



SN: 88545804  
Disclaimer: "ENERGY"



RN: 5355661  
SN: 86850043



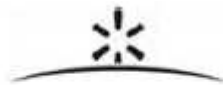
RN: 5355660  
SN: 86850031



RN: 5205530  
SN: 86743869



RN: 5672978  
SN: 87829565



RN: 5456662  
SN: 87383182



RN: 3680211  
SN: 77129996



RN: 3803680  
SN: 77409199





RN: 3437474  
SN: 77975342

Applicant further responds that Opposer’s defined term “Opposer’s Mark” is unintelligible because Opposer refers to *67 purported marks* identified in Exhibit A to the Opposition as constituting a single “Opposer’s Mark.” Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Opposition, and on that basis denies them.

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

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

4. Applicant denies that the USPTO currently recognizes the validity of the alleged Opposer’s Mark set forth in Reg. No. 3,865,523 for the  design mark, because the USPTO cancelled the trademark registration set forth under Reg. No. 3,865,523. Applicant responds that the alleged filings identified in Paragraph 4 speak for themselves, and Applicant denies the allegations in Paragraph 4 to the extent that they are inconsistent with these alleged filings. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Opposition, and on that basis denies them.

5. Applicant denies that Reg. No. 3,865,523 for the  design mark is “incontestable and provide[s] prima facie and conclusive evidence of Opposer’s ownership and exclusive rights to use Opposer’s mark in commerce,” because the USPTO cancelled the trademark registration set forth under Reg. No. 3,865,523. Applicant responds that the alleged filings identified in Paragraph 5 speak for themselves, and Applicant denies the allegations in

Paragraph 5 to the extent that they are inconsistent with these alleged filings. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 5 of the Opposition, and on that basis denies them.

6. Applicant denies that “since Opposer’s Mark has been first used, it has become synonymous with Opposer and its goods and services.” Opposer is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of the Opposition, and on that basis denies them.

7. Applicant denies that all of the purported “[r]epresentative examples” in Exhibit B to the Opposition show “Opposer’s Mark in connection with music and entertainment.” Specifically, Exhibit B to the Opposition includes a *fabricated, computer-generated image* that purports to be a “Walmart Drive In,” as depicted below:

Walmart Drive In – see <https://corporate.walmart.com/newsroom/2020/08/05/walmart-brings-the-big-screen-to-its-parking-lots-starting-august-14>



This digitally-created image does not show actual use in commerce of Opposer's Mark in connection with music and entertainment. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of the Opposition, and on that basis denies them.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8 of the Opposition, and on that basis denies them.

9. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Opposition, and on that basis denies them.

10. Applicant responds that the Application speaks for itself, and Applicant denies the allegations in Paragraph 10 of the Opposition to the extent that they are inconsistent with this Application. Applicant specifically denies that Applicant is seeking to register Applicant's Mark "on" the services in Classes 35, 37, 38, 41 and 43 identified in Paragraph 10 of the Opposition.

11. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Opposition, and on that basis denies them.

12. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Opposition, and on that basis denies them.

13. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 13 of the Opposition, and on that basis denies them.

14. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Opposition, and on that basis denies them.

15. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 of the Opposition, and on that basis denies them.

16. Applicant admits that it filed the Application on January 3, 2020. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 16 of the Opposition, and on that basis denies them.

17. Applicant denies Paragraph 17 to the extent that it implies Applicant was required to receive Opposer's consent to use or plan to use Applicant's Mark. Applicant admits that the Application is an "intent-to-use" application based on Section 1(b) of the Lanham Act and has not used Applicant's Mark in commerce in connection with the goods and services identified in the Application. To the extent a further response is required, Applicant denies the remaining allegations in Paragraph 17 of the Opposition.

18. In answering Paragraph 18 of the Opposition, Applicant repeats and reiterates the responses set forth in Paragraphs 1 through 17 above, as if the same were set forth herein. To the extent a further response is required, Applicant denies each and every allegation set forth in Paragraph 18 of the Opposition.

19. Applicant denies each and every allegation set forth in Paragraph 19 of the Opposition.

20. Applicant denies each and every allegation set forth in Paragraph 20 of the Opposition.

21. Applicant denies each and every allegation set forth in Paragraph 21 of the Opposition.

22. Applicant denies each and every allegation set forth in Paragraph 22 of the Opposition.

23. Applicant admits Paragraph 23.

24. Applicant admits that when registration is granted, Applicant will obtain a prima facie exclusive right to use Applicant's Mark, as it should. Applicant denies that such registration of Applicant's Mark would cause any damage or injury to Opposer.

25. Applicant denies each and every allegation set forth in Paragraph 25 of the Opposition.

26. In answering Paragraph 26 of the Opposition, Applicant repeats and reiterates the responses set forth in Paragraphs 1 through 25 above, as if the same were set forth herein. To the extent a further response is required, Applicant denies each and every allegation set forth in Paragraph 26 of the Opposition.

27. Applicant denies each and every allegation set forth in Paragraph 27 of the Opposition.

28. Applicant admits Paragraph 28.

29. Applicant denies each and every allegation set forth in Paragraph 29 of the Opposition.

30. Applicant denies each and every allegation set forth in Paragraph 30 of the Opposition.

31. Applicant denies each and every allegation set forth in Paragraph 31 of the Opposition.

32. In answering Paragraph 32 of the Opposition, Applicant repeats and reiterates the responses set forth in Paragraphs 1 through 31 above, as if the same were set forth herein. To the extent a further response is required, Applicant denies each and every allegation set forth in Paragraph 32 of the Opposition.



33. Applicant denies each and every allegation set forth in Paragraph 33 of the Opposition.

34. Applicant denies each and every allegation set forth in Paragraph 34 of the Opposition.

35. Applicant denies each and every allegation set forth in Paragraph 35 of the Opposition.

36. Applicant denies each and every allegation set forth in Paragraph 36 of the Opposition.

37. Applicant denies each and every allegation set forth in Paragraph 37 of the Opposition.

38. In answering Paragraph 38 of the Opposition, Applicant repeats and reiterates the responses set forth in Paragraphs 1 through 37 above, as if the same were set forth herein. To the extent a further response is required, Applicant denies each and every allegation set forth in Paragraph 38 of the Opposition.

39. Applicant responds that the Application speaks for itself, and Applicant denies the allegations in Paragraph 39 of the Opposition to the extent that they are inconsistent with this Application. Applicant specifically denies that Applicant is seeking to register Applicant's Mark "on" services listed in the Application.

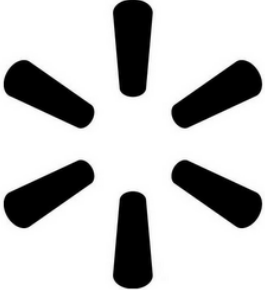


40. Applicant denies each and every allegation set forth in Paragraph 40 of the Opposition.

41. Applicant denies each and every allegation set forth in Paragraph 41 of the Opposition.

42. Applicant denies each and every allegation set forth in Paragraph 42 of the Opposition.

**FIRST AFFIRMATIVE DEFENSE**


43. Opposer inexplicably relies upon two cancelled trademark registrations and one abandoned trademark application as the basis for its claims:

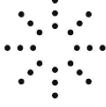
Mark	Registration No./ Serial No.	Status
	3,865,523	Cancelled
	4,602,202	Cancelled
	90/018,769	Abandoned

Opposer’s above-referenced cancelled and abandoned filings may not be relied upon to support any claims asserted by Opposer, and they should be stricken from the Opposition.

## **SECOND AFFIRMATIVE DEFENSE**

44. Applicant's use and/or registration of the Mark will not create any likelihood of confusion, mistake or deception because, *inter alia*, the Mark and Opposer's alleged "Opposer's Mark" are not "confusingly similar" as alleged by Opposer. Opposer ignores the distinct visual differences between the purported "Opposer's Mark" (which apparently consists of Opposer's

alleged "Spark Design" identified in Paragraph 1 of the Opposition, portrayed as , and/or Opposer's 67 purported marks identified in Exhibit A of the Opposition), on the one hand, and

Applicant's Mark , on the other hand. Opposer's alleged "Spark Design" consists of a design of six solid lines with each line beginning in a rounded cap, becoming wider in size as each line extends outwards culminating in a rounded cap. In contrast, Applicant's Mark consists of eight symmetrical dotted lines with equal white spaces between each dot; the lines formed from the three dots are narrower than the solid lines (that are curved on both ends) in Opposer's alleged "Mark." The respective marks, in their entireties, differ in sight and create a different overall commercial impression.

## **THIRD AFFIRMATIVE DEFENSE**

45. There is no likelihood of confusion, mistake or deception because, *inter alia*, the purported "Opposer's Mark" is weak and diluted.

## **FOURTH AFFIRMATIVE DEFENSE**

46. Opposer has inadequately pled a claim under Section 2(a) of the Lanham Act. Specifically, Opposer has failed to sufficiently allege that (i) Applicant's Mark is the same as, or

a close approximation of, the name or identity previously used by another person or institution; (2) Applicant's Mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution; (3) the person or institution identified in Applicant's Mark is not connected with the goods sold or services performed by Applicant under the mark; and (4) the fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when Applicant's Mark is used on or in connection with its goods and/or services. If anything, the opposite is true: as alleged in the Opposition, the Applicant's Mark is closely associated with the internationally famous Kanye West.

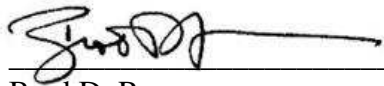
**WHEREFORE**, Applicant respectfully requests that the Board: (i) dismiss Opposition No. 91/268,856 with prejudice; (ii) allow Application Serial No. 88/746,444 to proceed to registration; and (iii) grant any and all further relief to Applicant that the Board finds necessary and just in the circumstances.

Applicant appoints as its attorney in this proceeding Brad D. Rose, Dyan Finguerra-DuCharme, and Ryan S. Klarberg of the firm Pryor Cashman LLP, 7 Times Square, New York, New York 10036-6569, to whom all correspondence in this proceeding should be addressed.

Dated: June 29, 2021

Respectfully submitted,

PRYOR CASHMAN LLP

A handwritten signature in black ink, appearing to read "Brad D. Rose", written over a horizontal line.

Brad D. Rose

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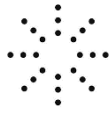
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Applicant's Answer and Affirmative Defenses has been served upon Opposer's attorney-of-record by email on June 29, 2021 at the following e-mail addresses:

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