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

Proceeding no.	92080601
Party	Defendant Compharm GmbH
Correspondence address	M. TERESHCHUK COMPHARM GMBH 340 S LEMON AVE #5380 WALNUT, CA 91789 UNITED STATES Primary email: info@compharm.net Secondary email(s): ouuuuuukh@aol.com No phone number provided
Submission	Answer
Filer's name	Tereshchuk
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Date	10/23/2022
Attachments	Respondent answer.pdf(4648421 bytes)

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23 October 2022

COMPHARM GMBH
340 S LEMON AVE #5380
WALNUT, CA 91789
UNITED STATES

Squish Beauty LLC,

Petitioner

Cancellation No. 92080601

Registration No. 3345863

v.

Compharm GmbH,

Respondent

RESPONDENT ANSWER

Respondent denies allegations of Petitioner as false.

ComPharm GmbH registered in the Trade Register of the District Court of Frankfurt am Main, Germany, under HRB 90066 is in good standing.

A proprietary disposable cosmetic applicator Squishy[®] was built for various cosmetic products ([EXHIBIT 1](#): a presentation of Squishy[®] copied from www.squishy.info; to watch videos, click on corresponding links). Numerous patents were granted worldwide to secure the intellectual property for Squishy[®] ([EXHIBIT 2](#)). A line for the serial production of Squishy[®] has been developed by a leading German packaging machine manufacturer (an investment of over 120 000 EUR). Thousands secondary packages for Squishy[®] have been manufactured. Squishy[®] was presented at numerous trade events ([EXHIBIT 3](#): Deutscher Handelskongress and Beauty Forum). Multiple attempts were made to bring the proprietary Squishy[®] into the commerce. Samples were shared with potential trade partners and investors.

A test marketing was conducted with a mock selling of Squishy[®] to determine its market price. Based on the persistent pursuance of, albeit not on the achieved commercialization of Squishy[®], which Respondent sincerely regrets, the registration of the mark was prolonged. Beyond an exchange of a few applicators for a token price, the commercialization of Squishy[®] was not successful for objective reasons.

An extraordinary epochal paradigmatic global shift in the consumer attitude toward disposable plastic packaging over the last decade and the legal ban in Europe on single-use plastic packaging (Directive (EU) 2019/904 includes “wet wipes”) made the first generation of single-use disposable applicators Squishy[®] outdated. Therefore, a second generation of the multiple-use refillable Squishy[®] has been developed (see a prototype in [EXHIBIT 4](#)): the user refills Squishy[®] with a liquid cosmetic (e.g., deodorant, after-shave, or sunscreen), squishes Squishy[®] from the bottom to have the cosmetic moisturize the soft white pad on the opposite side, applies the cosmetic on the skin, rinses Squishy[®] under tap water, if necessary, and keeps it till the next use. Preliminary manufacturing and distribution arrangements are being made in order to launch the second generation Squishy[®] on world markets within one year.

The trademark Squishy[®] is essential for the proprietary squishable cosmetic applicator, various cosmetics for its refill, and numerous related cosmetic products and applications in International Class 3 and protects the investment into them. Respondent has never had an intent to abandon the mark Squishy[®]. The pre-marketing phase of Squishy[®] took longer than expected due to the required considerable investment into the technology underlying Squishy[®], the unforeseeable paradigmatic global shift in the consumer attitude toward disposable plastics, the legal ban on single-use cosmetics, and the COVID pandemic.

Specifically for grouped allegations of Petitioner:

1. Respondent is not currently selling any goods bearing Respondent's Mark;

Respondent does not sell any of the goods listed in its registration in International Class 3 under Respondent's Mark online or through any other channels of trade;
Respondent is not presently using Respondent's Mark in commerce in connection with the goods identified in its registration in International Class 3

The trademark Squishy[®] has been used in association with the technological, patent, and business development of commercial products in International Class 3: various cosmetics delivered by the squishable applicator Squishy[®] and other related cosmetic products ([EXHIBIT 1](#)). Though no monetary sales of Squishy[®] have been completed, a mock sale of Squishy[®] to determine its market price was conducted for operational and financial forecasts. The pre-marketing phase of Squishy[®] took longer than expected due to the required considerable investment into the technology underlying Squishy[®], the unforeseeable paradigmatic global shift in the consumer attitude toward disposable plastics, the legal ban on single-use cosmetics, and the COVID pandemic. The developed the second-generation, multiple-use, refillable Squishy[®] with advanced capabilities ([EXHIBIT 4](#)) and related complementary and auxiliary products in Class 3 will be on world markets within one year.

2. Respondent has never made use of Respondent's Mark for all of the goods identified in its registration in International Class 3

[EXHIBIT 1](#) exemplifies dozens of various cosmetic products delivered by the proprietary cosmetic applicator Squishy[®] of the first generation. The disclosed second-generation, multiple-use, refillable Squishy[®] ([EXHIBIT 4](#)) with advanced capabilities further expands the spectrum of Squishy[®] by introducing a great variety of refill, complementary, and auxiliary cosmetic products essentially covering all goods in International Class 3.

3. Respondent has failed to use Respondent's Mark in commerce for the goods identified in Class 3 in the registration for Respondent's Mark and Respondent has no objective indicia of an intent to commence or resume use of Respondent's Mark for these goods; Respondent has abandoned Respondent's Mark due to nonuse with an intent not to resume use

The trademark Squishy[®] is essential for the proprietary squishable cosmetic applicator and related cosmetic products and protects the investment into them. Respondent has never had an intent to abandon the mark Squishy[®]. Respondent has consistently used the mark Squishy[®] in association with the technological, patent, and business development of commercial products in International Class 3. The pre-marketing phase of Squishy[®] took longer than expected due to the required considerable investment into the technology underlying Squishy[®], the unforeseeable paradigmatic global shift in the consumer attitude toward disposable plastics, the legal ban on single-use cosmetics, and the COVID pandemic. The second generation Squishy[®] ([EXHIBIT 4](#)) with advanced capabilities for a still broader spectrum of cosmetic products and applications has been developed in response to the paradigmatic shift in the consumer attitude toward disposable plastic packages and together with related cosmetic products in International Class 3 will be on world markets within one year.

Pursuant to 15 U.S.C. §§ 1064(3) and 1127, Respondent's Mark should be cancelled on the ground that the mark has been abandoned

There is no basis for the cancellation of the mark Squishy[®] as it is not abandoned:

- Respondent has consistently used the mark Squishy[®] in association with technological, patent, and business development of commercial products and applications in International Class 3, the proprietary squishable cosmetic applicator and related cosmetic products ([EXHIBIT 1](#), [EXHIBIT 2](#), [EXHIBIT 3](#)).

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