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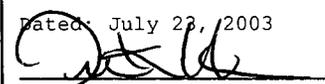
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TRADEMARK TRIAL AND APPEAL BOARD
07-23-2003
03 AUG -5 PM 9.02
U.S. Patent & TMOs/TM Mail Rpt Dt. #22

CERTIFICATE OF EXPRESS MAIL
I hereby certify that this APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service on this date in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number ER 075433932 US, postage fully prepaid, addressed to:

Box TTAB
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DR.
ARLINGTON, VA 22202-3513

Dated: July 23, 2003

Donn K. Harms

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

In the Matter of Application Serial No. 76/103,090
For the mark: APB AMERICAN PIG BRAND
Filing Date: August 7, 2000
Publication Date: October 1, 2002

THIS LITTLE PIGGY WEARS COTTON,

Opposer,

v.

The Eitan Hagler and Daniel Martinez Partnership,

Applicant.

Opposition No.: 91156629

**APPLICANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
NOTICE OF OPPOSITION**

APPLICANT, by and through its attorney of record, Donn K. Harms of the American Patent and Trademark Law Center, hereby submits the Answer to the Notice of Opposition of Opposer, THIS LITTLE PIGGY WEARS COTTON, as follows:

09/07/2002

1. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 and therefor denies them.

2. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 2 and therefor denies them.

3. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 3 and therefor denies them.

4. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 4 and therefor denies them.

5. Applicant admits that they are the owner of the application to register the trademark APB AMERICAN PIG BRAND, for use on "clothing, namely, golf shirts, dresses, jumpers, cardigans, suits, overcoats, overalls, trousers, jackets, singlets, lingerie, belts, knit shirts, sport shirts, sweat shirts, T-shirts, pants, sweaters, socks, ties, bow ties, shorts, beach visors, beachwear, swimsuits, hats, caps, beanies, blouses, underwear, jackets, pull overs and jerseys" in International Class 025, as well as for various good in Class 16. Applicant admits said application was assigned serial number 76/103090 and was published for opposition in the *Official Gazette* dated October 1, 2002. Applicant lacks sufficient knowledge or

Information sufficient to form a belief as to the truth of the remaining allegations of Paragraphs 5 and therefor denies them.

6. Applicant admits that it has claimed a date of first use of Applicant's mark in commerce in association with the goods identified in Class 25 as April 29, 1999.

7. Applicant denies the allegations of Paragraph 7.

8. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 8 and therefor denies them.

9. Applicant admits the allegations of Paragraph 9.

10. Applicant denies the allegations of Paragraph 10.

AFFIRMATIVE DEFENSES

11. The Notice of Opposition fails to state a claim upon which relief may be granted.

12. Opposer is barred from asserting a claim against Applicant under the theories of laches, acquiescence and estoppel because, among other reasons, Opposer failed to Oppose, during the publication period, Applicant's application for the substantially similar mark, AMERICAN PIG for "clothing, namely, golf shirts, dresses, jumpers, cardigans, suits, overcoats, overalls, trousers, jackets, singlets, lingerie, belts, knit shirts, sport shirts, sweat shirts, T-shirts, pants, sweaters, socks, ties, bow ties, shorts, beach visors, beachwear, swimsuits, hats, caps, beanies, blouses, underwear, jackets, pull overs and jerseys" in International Class 025, as well as for various good in Class 16, which application was assigned serial

09/07/2002
number 76-103089 and was published for opposition in the *Official Gazette* dated April 23, 2002.

13. Opposer has abandoned rights in their marks through acts which cause the marks to lose their significance as an indication of origin.

14. Opposer's marks are not inherently distinctive, have not become distinctive, and have attained no secondary meaning as the word "pig" and words which have as their root the word "pig" are diluted for clothing by the presence of numerous marks on the register and therefor purchasers do not associate the term "pig" with Opposer alone.

15. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, Opposer's marks and Applicant's mark are different in sound, appearance, and connotation and for other reasons are not confusingly similar.

16. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, Opposer's goods and the goods of Applicant are noncompetitive and unrelated.

17. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, the goods of Applicant are sold in a trade channels and territory remote from plaintiff's usage.

06/07/2003 11:11 AM

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSE TO NOTICE OF OPPOSITION was served upon Opposer, THIS LITTLE PIGGY WEARS COTTON, by mailing the same, first-class mail, to:

Kurt Koenig
Elizabeth A. Linford
KOENIG & ASSOCIATES
220 East Figueroa Street
Santa Barbara, CA

this 23rd Day of July, 2003.

By: 
DONN K. HARMS, Attorney for Applicant