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

In the matter of Application Serial No. 76/388,624
For the mark FEDCHECK
Published in the Official Gazette on October 8, 2002



FEDCHEX, LLC,

 Opposer,

vs.

ROLANDO BANCIELLA

 Applicant.

10-16-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposition No. 91157589

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW the Applicant, Rolando Banciella, ("Applicant"), and files its Answer to the Notice of Opposition as follows:

ANSWER

Applicant admits that it filed Application Serial No. 76/388,624 for the mark "FEDCHECK" for use in connection with "payment services namely, electronic processing and transferring of funds". Applicant denies the allegations in the first unnumbered paragraph of the Notice of Opposition that FEDCHEX, LLC, ("Opposer") will be damaged by Applicant's registration and that grounds exist to oppose Applicant's registration. Applicant is without sufficient information to form a belief as to the allegations as to the corporate identity and address of Opposer and therefore denies same.

1. Applicant denies the allegations contained in Paragraph

1 of the Notice of Opposition.

2. Applicant denies the allegations contained in Paragraph 2 of the Notice of Opposition.

3. Applicant admits that it filed an application on March 28, 2002 to register the mark "FEDCHECK" for payment services namely, electronic processing and transferring of funds, and that such application was assigned Serial No. 76/388,624, and that the mark was published for opposition in the Official Gazette of October 8, 2002. However, Applicant denies the remaining allegations of Paragraph 3 of the Notice of Opposition.

4. Applicant denies the allegations contained in Paragraph 4 of the Notice of Opposition to the extent that Applicant is the senior user of the mark "FEDCHECK" and that any confusion which may occur is a result of Opposer's subsequent adoption of the mark "FEDCHEX".

AFFIRMATIVE DEFENSES

5. The Notice of Opposition fails to state a claim upon which relief can be granted.

6. Opposer lacks standing to oppose.

7. Opposer did not file its Notice of Opposition with the trademark office in a timely manner.

8. Upon information and belief, Opposer does not not have proper chain of title ownership to its relied upon trademark "FEDCHEX".

9. Opposer has not and could not suffer any damage by reason

of Applicant's application and/or registration of "FEDCHECK" since, there is no appreciable likelihood of confusion.

10. Opposer's relied upon trademark "FEDCHEX" has not yet matured to registration, and therefore provides no right therein upon which Opposer may rely.

11. Applicant maintains senior rights in the mark "FEDCHECK".

12. Opposer's alleged mark "FEDCHEX" has not acquired a secondary meaning or distinctiveness.

13. Opposer is guilty of unclean hands.

14. Upon information and belief, Opposer has not used the mark "FEDCHEX" in connection with any goods or services in commerce and/or in the ordinary course of trade and/or in any manner sufficient to confer trademark rights therein.

15. Upon information and belief, Opposer does not currently, and has not, at any relevant time, had a bona fide intent to use "FEDCHEX" for its services.

16. Pursuant to 15 U.S.C. §1068, or as otherwise authorized, Applicant requests that the amendment of the identification of services in its application be entered should the Board deem it necessary in order to avoid any likelihood of confusion with Opposer's mark, and subject to proof by Opposer of its claims and claimed trademark rights at trial of this matter, such that the new identification of goods would read as follows: **"payment services namely, electronic processing and transferring of funds, excluding check verification and unfulfilled check collection services."** In

conjunction therewith, Applicant states that such restriction would serve to avoid any likelihood of confusion should this amendment be entered, and that Applicant is not using its mark on those services that will be effectively excluded from the application or registration if the proposed restriction is entered.

17. On August 15, 2002, Applicant amended its application to state a change in its first use date from February 8, 2002 to April 2001. Such amendment was supported by a declaration signed by Applicant. As such, Applicant enjoys priority of use.

18. There is no likelihood of confusion with respect to Applicant's mark and services as set forth in the application.

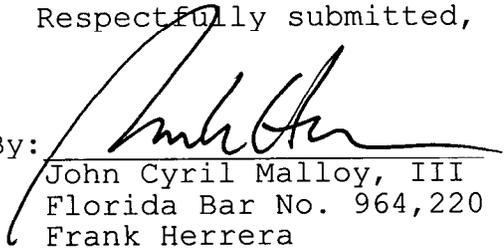
19. Applicant actually uses its mark only on specific types of services covered by the broad identification in its application and therefore there is no likelihood of confusion with respect to Applicant's actual services. If the Board ultimately finds that Opposer is entitled to judgment with respect to Applicant's services as broadly identified, Applicant would be entitled to a registration of its mark with a restricted identification reflecting the actual nature of its services.

WHEREFORE, Applicant prays that the Opposition be dismissed with prejudice.

Dated: October 13, 2003

Respectfully submitted,

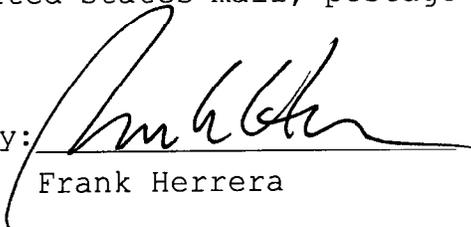
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon Eric Goodman, Esq., Attorneys for Opposer, GOODMAN & CRAY, LLP, 414 W. Fourth Street, Suite A, Santa Ana, California 92701, via first class United States mail, postage pre-paid, this 13 day of October, 2003.

By: 
Frank Herrera

CERTIFICATE OF MAILING

I HEREBY CERTIFY that an original of the foregoing Answer was mailed via first class United States Mail, postage pre-paid, in an envelope addressed to: Assistant Commissioner for trademarks, BOX TTAB No Fee, 2900 Crystal Drive, Arlington, Virginia, 22202-3513. this 13 day of October, 2003.

By: 
Frank Herrera