

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

In the Matter of:
Application Serial No. 76/380073
Published in the *Official Gazette*
October 21, 2003

EF COMPOSITE TECHNOLOGIES LP,)	
)	
Opposer,)	Opposition No. 91,157,712
)	
v.)	
)	
PURSUIT MARKETING, INC,)	
)	
Applicant.)	
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ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Madam:

Applicant, Pursuit Marketing, Inc (“Applicant”), through its attorneys, hereby answers the allegations set forth in the Notice of Opposition filed by Opposer, EF Composite Technologies LP (“Opposer”), as follows:

1. Opposer is a manufacturer of racquetball racquets, strings, grips, and accessories, such as sports bags, gloves, hand wraps and goggles (collectively “Opposer’s Goods”).

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 1 and therefore denies the same.

2. Since at least as early as 1989, the predecessor in interest of Opposer and then Opposer has continually used the trademark E-FORCE in commerce in connection with Opposer’s Goods and has extensively advertised and promoted its E-FORCE mark in connection with Opposer’s Goods through both conventional advertisements and an Internet website.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 2 and therefore denies the same.

3. Opposer's Goods are sold under the E-Force mark have been sold in general sporting goods stores, specialized sporting goods stores and racquetball clubs.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 3 and therefore denies the same.

4. As a result of the quality of the Opposer's Goods and the widespread use and promotion of such goods under the E-FORCE mark, the E-FORCE mark has become a symbol of Opposer, Opposer's Goods and Opposer's good will.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 4 and therefore denies the same.

5. Opposer is the owner of record of U.S. Trademark Application No. 76/453469 for the mark E-FORCE, covering the Opposer's Goods.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 5 and therefore denies the same.

6. On information and belief, Applicant is an Illinois corporation primarily engaged in the sale and distribution of paintball guns, paintballs, paintball gun barrels, paintball gun expansion chambers, non-telescopic paintball gun sights, paintball gun barrel plugs, and paintball filler adapters (collectively "Applicant's Goods").

ANSWER: Applicant admits the allegations of Paragraph 6.

7. On information and belief, Applicant's Goods are sold in general sporting goods stores, specialized sporting goods stores, and at paintball ranges and facilities.

ANSWER: Applicant admits that Applicant's Goods are sold in paintball stores, paintball game fields and mass merchant stores. Applicant denies the remaining allegations of Paragraph 7.

8. On information and belief, Applicant has promoted its E-FORCE mark in connection with Applicant's Goods through both conventional advertisements and an Internet website.

ANSWER: Applicant admits that it has promoted its E-FORCE mark in connection with Applicant's Goods through an Internet website. Applicant further admits that it has promoted its E-FORCE mark in connection with Applicant's Goods in print, by way of paintball magazines. Applicant denies the remaining general allegations of Paragraph 8.

9. Applicant is listed as the owner of record of the '073 Application for the mark E-FORCE, covering the Applicant's Goods.

ANSWER: Applicant admits the allegations of Paragraph 9.

10. The '073 Application was filed on March 8, 2002 on the basis of an Intent to Use, under Section 1(b) of the Lanham Act, 15 U.S.C. §1051 (b).

ANSWER: Applicant admits the allegations of Paragraph 10.

11. Opposer's first use of the mark E-FORCE predates Applicant's filing date by over twelve (12) years.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 11 regarding when Opposer first used its asserted mark and therefore denies the same.

12. On information and belief, Opposer's first use of the mark E-FORCE in commerce predates any actual use of E-FORCE by Applicant in commerce.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 12 regarding when Opposer first used its asserted mark and therefore denies the same.

13. Opposer's Goods and Applicant's Goods, both bearing the mark E-FORCE, are currently offered for sale in one or more of the same general sporting goods stores.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 13 and therefore denies the same.

14. On information and belief, Opposer's Goods and Applicant's Goods, sold under the parties respective E-FORCE marks, have appeared in the same third-party advertisements.

ANSWER: Applicant is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 14 and therefore denies the same.

15. The grant of registration to Applicant for its E-FORCE mark as sought in the '073 Application should be denied on the grounds of Opposer's prior use of the E-FORCE mark. The mark sought to be registered by Applicant is confusingly similar to Opposer's E-FORCE mark, and the continued use of the E-FORCE mark by the Applicant is likely to cause confusion or mistake in the minds of the public and prospective purchasers. The relevant segment of the public is likely to believe that Applicant's Goods are those of the Opposer, or are endorsed, sponsored or otherwise affiliated or connected with Opposer, or that Opposer's Goods are associated with Applicant, particularly in light of the overlap in trade channels, all to the damage and injury of the purchasing public and to the damage and injury of the Opposer.

ANSWER: Applicant denies the allegations of Paragraph 15.

16. The grant of registration to the Applicant for its E-FORCE mark as sought in the '073 Application should be denied on the grounds of dilution by tarnishment of Opposer's E-FORCE mark through Applicant's use of E-FORCE with paintball guns a result of a large percentage of the purchasing public view firearms, and firearms like devices, with distaste or apprehension.

ANSWER: Applicant denies the allegations of Paragraph 16 and more particularly denies that Applicant's Goods are firearms or "firearms like devices."

GENERAL DENIAL

Respondent denies each and every allegation contained in the Notice of Opposition not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Opposer fails to state a claim upon which relief may be granted.
2. Neither Opposer, nor any "related" company of Opposer, as defined in the Trademark Act, has ever used the mark E-FORCE in connection with paintballs, paintball guns or similar goods.

3. Neither applicant, nor any "related" company of Applicant, as defined in the Trademark Act, has ever used the mark E-FORCE in connection with racquet ball equipment or similar goods.

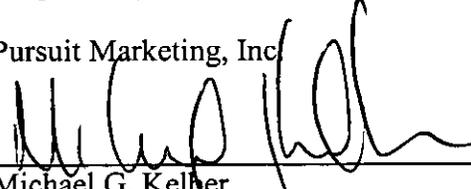
4. There have been no instances of actual confusion between Opposer's mark and Respondent's mark.

5. No likelihood of confusion exists between Opposer's mark and Respondent's mark.

WHEREFORE, Applicant asks that the Notice of Opposition be dismissed.

Respectfully submitted,

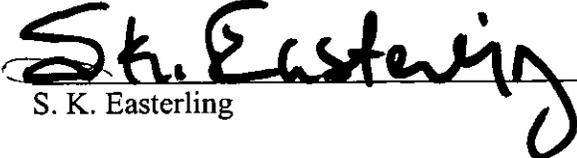
Pursuit Marketing, Inc

By: 
Michael G. Keltner
Neal, Gerber & Eisenberg, LLP
Two North LaSalle, Suite 2100
Chicago, Illinois 60602
Phone: (312) 715-4000
Fax: (312) 715 4108
ATTORNEY FOR RESPONDENT

Dated: October 21, 2003

CERTIFICATE OF SERVICE AND MAILING

I, S. K. Easterling, a non-attorney, hereby certify that Petitioner's ANSWER TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to 1) Assistant Commissioner for Trademarks, 2900 Crystal Drive – Box TTAB/No Fee, Arlington, Virginia 22202-3513; and to 2) Jefferson Perkins, Esq., PIPER RUDNICK, P.O. Box 64807, Chicago, IL 60664 on October 21, 2003.


S. K. Easterling

TTAB

LAW OFFICES
NEAL, GERBER & EISENBERG LLP

TWO NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602-3801
(312) 269-8000
www.ngelaw.com

MICHAEL G. KELBER
(312) 269-5322

FAX: (312) 269-1747
MKELBER@NGELAW.COM

October 21, 2003



10-27-2003

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

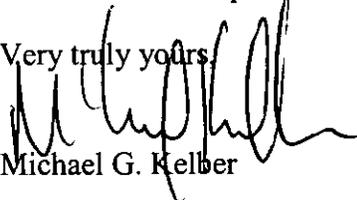
Re: Transmittal: Answer to Notice of Opposition
EF Composite Technologies LP v. Pursuit Marketing, Inc.
Opposition No. 91,157,712
Appln. Serial No. 76/380,073

Dear Madam:

Enclosed are the following documents for consideration by the Trademark Trial and Appeal Board in the above-referenced matter:

- 1) Answer to Notice of Opposition;
- 2) Postage pre-paid return postcard.

We believe that no fee is due with the enclosed filing, however, The Patent and Trademark Office is authorized to charge any fee delinquency to our Deposit Account, No. 502,261. Likewise, please credit any overpayment to this same Deposit Account.

Very truly yours,

Michael G. Kelber

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Enclosure

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