

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

CHRISTOPHER BROOKS,

Opposer,

v.

CREATIVE ARTS BY CALLOWAY, LLC,

Applicant.

Opposition No.: 91160266

Serial No.: 75/761,159

Service Mark: CAB CALLOWAY



06-03-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, CREATIVE ARTS BY CALLOWAY, LLC, a Delaware corporation with an address located at 405 Regency Court, Hockessin, Delaware, through its undersigned counsel, Kelley Drye & Warren LLP, hereby answers the allegations set forth in the Notice of Opposition as follows:

1. In answering the preface to the Notice of Opposition, Applicant admits that it filed an intent-to-use application to register the mark CAB CALLOWAY, that said application received Serial Number 75/761,159, and that Opposer opposes registration of Applicant's mark. Except as so admitted, Applicant avers that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the preface to the Notice of Opposition about Opposer's residence, and therefore denies the same. Applicant further denies all allegations and inferences in the preface to the Notice of Opposition that Opposer will be damaged by the registration of Applicant's mark.

2. Applicant lacks knowledge and information sufficient to form a belief with respect to the allegations contained in Paragraph 1 of the Notice of Opposition and,

therefore, denies same, except Applicant denies that Opposer used the designation THE CAB CALLOWAY ORCHESTRA at Cab Calloway's request.

3. Applicant denies each and every allegation contained in Paragraph 2 of the Notice of Opposition, including but not limited to any allegation that the U.S. District Court for the Southern District of New York or the Second Circuit ever made findings "recognizing" that Opposer had established that the designation claimed as a mark by Opposer had achieved distinctiveness or trademark significance identifying Opposer as the source of music performances or any other goods or services.

4. Applicant denies each and every allegation in Paragraphs 3, 5, 6, 7 and 8 of the Notice of Opposition, and further alleges that the decision of the United States District Court for the Southern District of New York did not reach the issue of whether Opposer ever established that the designation he now claims as a mark and asserts against Applicant ever achieved distinctiveness or trademark significance identifying Opposer as the source of musical performances or any other goods or services.

5. Applicant admits the allegations of Paragraph 4 of the Notice of Opposition.

6. In answering the Notice of Opposition's closing and prayer for relief, Applicant denies that "Opposer will be damaged by the registration of Applicant's Mark by Applicant" and denies that Opposer is entitled to denial of the Application Serial No. 75/76,159.

FIRST AFFIRMATIVE DEFENSE

7. As and for a first affirmative defense and counterclaim, denies that Opposer has stated a claim on which the requested relief can be obtained.

8. Applicant reserves the right to assert other affirmative defenses after discovery sheds further light on Opposer's claims.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety.

Dated: June 3, 2004

KELLEY DRYE & WARREN LLP
Attorneys for Applicant
Creative Arts by Calloway, LLC

By: William R. Golden, Jr.
William R. Golden, Jr.
Kathryn E. Diaz
101 Park Avenue
New York, NY 10178
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served upon Opposer's attorneys, Barbara Solomon and Evan Gourvitz of Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017, the address designated by said attorneys for that purpose, by depositing a true copy thereof with the United States Postal Service as first-class mail on June 3, 2004.

Dated: June 3, 2004

Kathryn Gravina
Kathryn Gravina

CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL LABEL NO.: EU 947751660 US

DATE OF DEPOSIT: June 3, 2004

The undersigned hereby certifies that the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to Box TTAB No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Kathryn Gravina
Kathryn Gravina

TTAB

KELLEY DRYE & WARREN LLP

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June 3, 2004

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Commissioner for Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3514

Re: Christopher Brooks v. Creative Arts By Calloway, LLC
Opposition No. 91160266

Dear Sir or Madam:

In connection with the above-captioned proceeding, we enclose Applicant's Answer to Notice of Opposition.

Kindly acknowledge receipt of same by stamping and returning the enclosed self-addressed postcard.

Sincerely,

William R. Golden, Jr.

WRG:kg
Enclosures