

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

PHAT FASHIONS LLC,)	
)	Opposition No. 91161466
Opposer,)	
)	Mark: PHATMUSCLE
v.)	
)	Serial No.: 76/498,101
LOPEZ, GABRIEL R.,)	
)	Filing Date: February 19, 2003
Applicant.)	
_____)	Published: March 2, 2004

APPLICANT'S ANSWER AND AFFIRMATIVE OR ADDITIONAL DEFENSES

Applicant Gabriel R. Lopez (“Lopez”), through his undersigned counsel, and pursuant to Rules 8, 11 and 12, Federal Rules of Civil Procedure, and 37 C.F.R. § 2.106, responds to the Notice of Opposition filed against him by Opposer Phat Fashions LLC (“Opposer”), in correspondingly numbered paragraphs as follows:

1. Lopez is without knowledge of the allegations of paragraph 1 and therefore denies same.

2. Lopez is without knowledge of the allegations of paragraph 2 and therefore denies same.

3. Lopez is without knowledge of the allegations of paragraph 3 and therefore denies same.

4. Lopez is without knowledge of the allegations of paragraph 4 and therefore denies same.

5. Lopez is without knowledge of the allegations of paragraph 5 and



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therefore denies same.

6. Lopez is without knowledge of the allegations of paragraph 6 and therefore denies same.

7. Lopez is without knowledge of the allegations of paragraph 7 and therefore denies same.

8. Lopez is without knowledge of the allegations of paragraph 8 and therefore denies same.

9. Lopez is without knowledge of the allegations of paragraph 9 and therefore denies same.

10. Lopez admits that he filed an Intent-To-Use Application to register the mark PHATMUSCLE on February 19, 2003. Lopez is without knowledge of each and every remaining allegation of paragraph 10 and therefore denies same.

11. Lopez denies the allegations of paragraph 11.

12. Lopez denies the allegations of paragraph 12.

13. Lopez is without knowledge of the allegations of paragraph 13 and therefore denies same.

14. Lopez denies the allegations of paragraph 14.

WHEREFORE, Applicant, Gabriel R. Lopez, request that this Opposition be dismissed and that application serial number 76/498,101 mature as a registration.

AFFIRMATIVE OR ADDITIONAL DEFENSES

FIRST DEFENSE

Lopez's applied-for mark is not likely to cause confusion, or to cause mistake, or to deceive, as to the affiliation, connection, or association of Lopez with Opposer, or as to the origin, sponsorship, or approval of Opposer's goods, services or commercial activities by Lopez.

SECOND DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

THIRD DEFENSE

One or more of Opposer's alleged registrations are invalid and one or more of Opposer's alleged marks do not serve or are otherwise incapable of serving as trademarks or service marks because such mark(s) fail to identify a single source, are merely descriptive, or generic or otherwise have not acquired secondary meaning.

CORRESPONDENCE

Please direct all correspondence to:

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1301 Riverplace Boulevard
Suite 1500
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(904) 398-3911
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APPOINTMENT OF ATTORNEYS

Lopez herein appoints: Richard S. Vermut, Reg. No. 41,362 and Thomas C. Saitta, Reg. No. 32,102 and the firm of Rogers Towers, P.A. as his attorneys to transact all business in the USPTO relating to this matter with full power of substitution.

Respectfully submitted,



Richard S. Vermut
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Attorney for Applicant Gabriel R. Lopez

CERTIFICATE OF MAILING UNDER 37 CFR § 1.8

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Trademarks, Box TTAB No Fee, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on September 14, 2004.



Richard S. Vermut
Reg. No. 41,362

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2004, a true and correct copy of the foregoing "Applicant's Answer and Affirmative or Additional Defenses" was served by United States first class mail, postage prepaid and address to the following counsel for the Opposer:

Brad D. Rose, Esquire
Michael Maoz, Esquire
Pryor Cashman Sherman & Flynn LLP
410 Park Avenue
New York, New York 10022



Richard S. Vermut