

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

Laxmeter, Joel S.,

Opposer,

v.

Martino, Carlos Daniel,

Applicant.

Opposition No. 91162415

ANSWER TO NOTICE OF OPPOSITION

**ANSWER TO NOTICE OF OPPOSITION**

In response to the Notice of Opposition issued by the Board on October 5, 2004, Applicant, CARLOS DANIEL MARTINO, responds as follows:

1. Answering the first part of paragraph 1 of the Notice of Opposition, Applicant denies the allegations therein, and further asserts that Opposer is estopped from making such allegations. Answering the second part of paragraph 1, Opposer alleges conclusions of law for which no answer is required, to the extent the allegations are deemed factual, Applicant denies the allegations of the second part of paragraph 1 of the Notice of Opposition

2. Answering the first part of paragraph 2, Applicant denies the allegations therein, and further asserts that Opposer is estopped from making such allegations. Answering the second part of paragraph 2, Opposer alleges conclusions of law for which no answer is required, to the extent the allegations are deemed factual, Applicant denies the allegations of paragraph 2 of the Notice of Opposition.

3. Answering the first part of paragraph 3 of the Notice of Opposition, Applicant lacks sufficient information upon which to either admit or deny the allegations therein, and therefore, denies said allegation.



4. Answering paragraph 4 of the Notice of Opposition, Opposer alleges conclusions of law for which no answer is required, to the extent the allegations are deemed factual, Applicant denies the allegations of paragraph 4 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

In further answer to the Notice, Applicant asserts that:

5. The instant Opposition should be dismissed because Opposer has failed to adequately allege grounds for the instant opposition.

6. Applicant alleges that Opposer's use of the pleaded mark is without the consent of Applicant. Applicant is the originator and creator of the mark and name "Dog Days". Opposer was formerly in a musical band with Applicant; however, since Applicant is no longer in the same musical group as Opposer, Opposer's use of the mark constitutes trademark infringement.

7. Opposer has continued to use Applicant's mark without the proper consent or permission of Applicant. Opposer has no valid legal grounds to claim any rights to the Mark. Opposer has no federal trademark registration or any state registration that establishes any rights to the Mark.

8. Applicant alleges that Opposer's use of Applicant's mark is invalid. Opposer does not have the legal standing to claim any rights or interest to the Applicant's mark.

9. The instant Opposition should be dismissed because Opposer has unclean hands.

10. Opposer's opposition should be dismissed based on the doctrines of estoppel, laches, and acquiescence.

11. In view of the foregoing, Applicant contends that this Opposition is groundless and baseless in fact and that Opposer has not shown in any manner whatsoever wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark, i.e. Opposer has failed to allege grounds sufficient to establish standing and to maintain the Opposition.

WHEREFORE, Applicant prays that:

(a) The Opposition against U.S. Trademark Application No. 78/340,461 be dismissed in its entirety and that registration issue to Applicant for its mark.

DATED this \_\_\_\_\_ day of November, 2004.

Respectfully submitted,

By: \_\_\_\_\_

Elsa Ramo  
Of Attorneys for Applicant  
Law Offices of Elsa Ramo  
100 Universal City Plaza, Building 6128  
Universal City, California 91608  
Telephone: (310) 383-3810  
Facsimile: (818) 733-2754

**CERTIFICATE OF MAILING**

I hereby certify that this ANSWER TO NOTICE OF OPPOSITION is being deposited with Fed Ex priority mail in an envelope addressed to:

Assistant Commissioner for Trademarks  
Box TTAB NO FEE  
2900 Crystal Drive  
South Tower Building  
Arlington, Virginia 22202-3514

on November 12, 2004.

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Elsa Ramo

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**CERTIFICATE OF SERVICE UNDER 37 C.F.R. §2.119(a)**

I hereby certify that a true and correct copy of the attached *Answer to Notice of Opposition* was served on November 12, 2004 by sending a copy, via US Mail, postage prepaid, to the following person:

Joel S. Laxmeter  
14718 Greenleaf Street  
Sherman Oaks, California 91403

Date: November 12, 2004.

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Elsa Ramo  
Of Attorneys for Applicant  
Law Offices of Elsa Ramo  
100 Universal City Plaza, Building 6128  
Universal City, California 91608  
Telephone: (310) 383-3810  
Facsimile: (818) 733-2754