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

Proceeding	91163719
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DIGI INTERNATIONAL, INC.)	
)	Opposition No. 91163719
v.)	
)	In Re: Serial No. 76561585
)	
DIGIPOS SYSTEMS INC., formerly)	
PC-POS (NORTH AMERICA) INC.)	

ANSWER

The Applicant, DIGIPOS SYSTEMS INC. (hereinafter the "Applicant"), changed its name on January 12, 2004 from PC-POS (NORTH AMERICA) INC., which Change of Name was recorded with the Assignment Division of the U.S. Patent and Trademark Office on February 6, 2004, at Reel/Frame 002911/0160. The Applicant, a corporation of the Canadian province of Ontario having its principal place of business at 1320 Heine Court, Burlington, Ontario, L7L 6L9, Canada, hereby gives notice that it fully contests and now makes its answer to the Notice of Opposition by DIGI INTERNATIONAL, INC. (hereinafter the "Opposer"). This answer is made within the time limitation set by the January 7, 2005 letter from the Board.

1. As to Paragraph 1, the Applicant admits all allegations.

2. As to Paragraph 2, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the same. The Applicant specifically denies that the Opposer has a “house” mark and in any event denies that Opposer’s DIGI “house” mark is at all distinctive.
3. As to Paragraph 3, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
4. As to Paragraph 4, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
5. As to Paragraph 5, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

6. As to Paragraph 6, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
7. As to Paragraph 7, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
8. As to Paragraph 8, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
9. As to Paragraph 9, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient

knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

10. As to Paragraph 10, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
11. As to Paragraph 11, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
12. As to Paragraph 12, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
13. As to Paragraph 13, the Applicant admits that the allegations regarding the cited

copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

14. As to Paragraph 14, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

15. As to Paragraph 15, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

16. As to Paragraph 16, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

17. As to Paragraph 17, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
18. As to Paragraph 18, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
19. As to Paragraph 19, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.
20. As to Paragraph 20, the Applicant admits that the allegations regarding the cited copy of a printout from the United States Trademark Office database are consistent with the information on the printout, but the Applicant lacks sufficient

knowledge to form a belief as to the validity of the underlying registration or any other allegations, and therefore denies same.

21. As to Paragraph 21, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the said allegations and puts the Opposer to the strict proof thereof. The Paragraph also calls for legal conclusions and is therefore further denied. As well, the Opposer cites the filing date for the Applicant's mark, ignoring the fact that the Applicant commenced use of its DIGIPOS mark in commerce in the U.S. in January of 2002, well prior to November 21, 2003. Indeed, the Applicant commenced use of its DIGIPOS mark in Canada as early as September of 2001 and in the United Kingdom as early as February of 1995.
22. As to Paragraph 22, the Paragraph calls for legal conclusions and is therefore denied. The Opposer's alleged use of the "formative" mark DIGI in association with components for point-of-sale systems is specifically denied. In any event such use does not constitute use of the Opposer's mark(s) in association with computer hardware, peripheral equipment and software for use in controlling point-of-sale transactions, and managing point of sale information and all retail store management procedures. Although the Opposer argues that its products are used as components of point-of-sale systems, the Opposer has not specified any of those uses in any of their registrations. Furthermore, any alleged use of

the Opposer's marks in association with the said components would be directed to point-of-sale system professionals, such as for example the Applicant, who implement components of the Opposer with their own and/or components of others to form point-of-sale systems. These point-of-sale systems no longer bear the "formative" DIGI mark, and so the "formative" DIGI mark is never used in association with point-of-sale systems. Conversely, the Applicant's use of its mark in association with complete point-of-sale systems is directed to retailers. The respective channels of trade of the Applicant and Opposer are accordingly different, and the professionals with whom the Opposer deals are sophisticated and are not likely to be confused between the Applicants' and Opposers' wares.

23. As to Paragraph 23, the Paragraph calls for legal conclusions and is therefore denied. The Applicant specifically denies that the Opposer has established a "family" of marks, since the Opposer has adopted the term "Opposer's family of DIGI marks" in its Notice of Opposition. The Applicant's use of the same term in this Answer is to denote the aggregate group of marks and is not an admission that the aggregate acts is, or is capable of acting as, a "family" of marks.
24. As to Paragraph 24, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the said allegations and puts the Opposer to the strict proof thereof. The Paragraph also calls for legal conclusions and is therefore further denied.

25. As to Paragraph 25, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the said allegations and puts the Opposer to the strict proof thereof. The Paragraph also calls for legal conclusions and is therefore further denied. The Applicant specifically denies that the Opposer's DIGI mark or indeed the "family" of DIGI marks are in any way distinctive in the particular industry.
26. As to Paragraph 26, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the said allegations and puts the Opposer to the strict proof thereof. The Paragraph also calls for legal conclusions and is therefore further denied.
27. As to Paragraph 27, the Applicant lacks sufficient knowledge to form a belief as to the allegations, and therefore denies the said allegations and puts the Opposer to the strict proof thereof. The Paragraph also calls for legal conclusions and is therefore further denied.

Further the Applicant affirmatively alleges as follows:

28. The marks alleged by the Opposer to constitute a "family" of marks do not in fact do so, for at least the reason that the common element DIGI does not operate as

a source identifying term or one which serves to make the marks inherently distinctive.

29. Examination of the USPTO records shows an abundance of marks comprising the “formative” DIGI mark, particularly within International Class 9. This prolific use of the “formative” mark DIGI by others precludes the formation of the “family” of marks alleged. Furthermore the Opposer’s marks as a whole do not provide a commercial impression as a “family” of related marks. The Applicant further specifically denies that the Opposer had established a “family” of marks prior to the first use in commerce of the Applicant’s mark.
30. In addition to not being a family of marks, none of the individual marks in and of themselves are sufficiently close to the Applicant’s mark to cause a likelihood of confusion. Due to prolific use of the formative mark “DIGI”, the same is not entitled to a wide ambit of protection.
31. On information and belief, no member of the relevant purchasing public has ever been confused, in either the United States or Canada, as to the origin of the wares of either the Opposer or the Applicant with respect to the other party.

WHEREFORE, the Applicant requests that the Notice of Opposition brought by the Opposer be found to be groundless and dismissed with

instructions that the Applicant's application Serial No. 76561585 be passed to issuance of a Notice of Allowance.

Respectfully submitted,

/serge anissimoff/

Date: FEBRUARY 15, 2005

Serge Anissimoff
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this ANSWER to Opposition No. 91163719 is being delivered in accordance with 37 CFR § 2.119(b)(5) by overnight courier, this 15th day of February, 2005 to Ms. MARSHA STOLT at MOSS & BARNETT, 90 SO. Seventh St. 4800 Wells Fargo Ctr. Minneapolis, Minnesota, 55402-4129, UNITED STATES OF AMERICA and that a copy of the same is also being sent via facsimile to Ms. MARSHA STOLT at MOSS & BARNETT to fax number: (612) 339-6686 this same day.

/serge anissimoff/

SERGE ANISSIMOFF
ANISSIMOFF & ASSOCIATES