

ESTTA Tracking number: **ESTTA40538**

Filing date: **07/29/2005**

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

Proceeding	91165614
Party	Defendant Shank, Ken Shank, Ken 1545 Victory Boulevard, #103 Glendale, CA 91201
Correspondence Address	Shank, Ken 1545 Victory Boulevard, #103 Glendale, CA 91201
Submission	Answer
Filer's Name	Roy L. Anderson
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Signature	/roy l anderson/
Date	07/29/2005
Attachments	SevenDAnswer.pdf (4 pages)

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

Opposition No. 91165614

Serial No. 78411126

M & S Trading, Inc.

v.

Shank, Ken

ANSWER

Ken Shank, by and through his undersigned attorney, hereby responds to the Notice of Opposition of M & S Trading, Inc. (hereinafter "M&S") as follows:

Ken Shank is without knowledge or information sufficient to form a belief as to the truth of the general allegations set forth in the first unnumbered paragraph of the Notice of Opposition and therefore denies same.

1. Ken Shank is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Notice of Opposition and therefore denies same.

2. Ken Shank is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 2 of the Notice of Opposition and therefore denies same. Ken Shank denies the remaining allegations of paragraph 2 of the Notice of Opposition.

3. Ken Shank admits that Registration No. 2,877,867 issued August 24, 2004 for clothing form men, women, boys, and girls; namely, shirts, pants, jeans, shorts,

sweaters, jackets, and swim wear, that the TARR system as of July 26, 2005 identifies said Registration as having a current status as registered and lists the owner of said mark as M & S Trading, Inc., 3042 S. Orange Avenue, Santa Ana, CA 92707, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 3 of the Notice of Opposition and therefore denies same.

4. Ken Shank is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Notice of Opposition and therefore denies same.

5. Ken Shank admits that Registration No. 2,512,808 issued November 27, 2001 for clothing, namely, shirts, that the TARR system as of July 26, 2005 identifies said Registration as having a current status as registered and lists the owner of said mark as Sam S. Khalil, 3042 S. Orange Avenue, Santa Ana, CA 92707, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the Notice of Opposition and therefore denies same.

6. Ken Shank admits that the goods for which he seeks to register the mark SEVEN D are hats, shirts, pants, shoes, jackets, sweat suits, lingerie, gloves, belts and underwear; sportswear, namely, baseball jerseys, hockey jerseys, football jerseys, sport tank shirts, basketball shirts, sweat pants, sweat shirts, bike shorts, shorts, BMX pants, and BMX shirts and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6 of the Notice of Opposition and therefore denies same.

7. Ken Shank is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Notice of Opposition and therefore denies same.

8. Ken Shank admits that he seeks to register the mark SEVEN D and denies all remaining allegations of paragraph 8 of the Notice of Opposition.

9. Ken Shank admits that he filed U.S. Trademark Application Serial No. 78/312556 on October 12, 2003 for the stylized mark having the words 7.D for hats, shirts, pants, shoes, jackets, sweat suits, sportswear, lingerie, gloves, belts, and underwear, that he obtained a City of Los Angeles Tax Registration Certificate c/o SEVEN-D CLOTHING which was issued March 8, 2003, and that he made sales of shirts using SEVEN D prior to the filing date of his intent-to-use application for the SEVEN D mark on April 30, 2004 and admits, accept as otherwise stated herein, the remaining allegations of paragraph 9 of the Notice of Opposition.

10. Ken Shank denies the allegations set forth in paragraph 10 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

Ken Shank filed U.S. Trademark Application Serial No. 78/312556 on October 12, 2003 for the stylized mark having the words 7.D for hats, shirts, pants, shoes, jackets, sweat suits, sportswear, lingerie, gloves, belts, and underwear and, based upon information and belief, such filing predates any use of the mark SEVEN-D by M&S.

SECOND AFFIRMATIVE DEFENSE

Based upon information and belief, Ken Shank began using the mark SEVEN-D prior to M&S.

THIRD AFFIRMATIVE DEFENSE

The Notice of Oppositions is barred by laches.

FOURTH AFFIRMATIVE DEFENSE

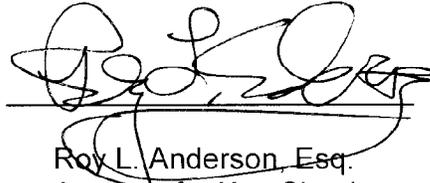
The Notice of Oppositions is barred by acquiescence.

Respectfully submitted,

LAW OFFICES OF ROY ANDERSON

Dated: July 29, 2005

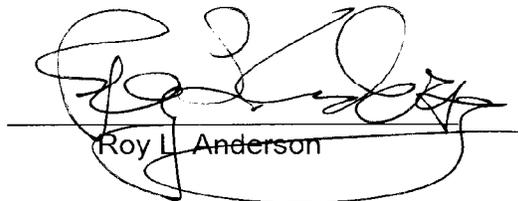
By



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PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer has been served on M & S Trading, Inc. by mailing said copy on the date identified above, via First Class Mail, postage prepaid to: Cynthia A. Bonner, Christie, Parker & Hale, LLP, P.O. Box 7068, Pasadena, CA 91109-7068.



Roy L. Anderson