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

Proceeding	91168845
Party	Defendant Reach Event Marketing, LLC Reach Event Marketing, LLC 9933 Alliance Road Cincinnati, OH 45242
Correspondence Address	Sheila Johnson REACH EVENT MARKETING, LLC 9933 ALLIANCE ROAD CINCINNATI, OH 45242
Submission	Answer and Counterclaim
Filer's Name	Jason M. Theobald
Filer's e-mail	jtheobald@reachusa.com
Signature	/Jason M. Theobald/
Date	03/03/2006
Attachments	ANSWER to Opposition_Final Document.pdf (11 pages) Exhibit A.pdf (1 page) Exhibit B.pdf (1 page) Exhibit C.pdf (2 pages) Exhibit D.pdf (2 pages)

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

In the Matter of Application Serial No. 78/522,183
Published in the Official Gazette on September 27, 2005

NFL PROPERTIES LLC and PANTHERS FOOTBALL LLC, Opposers, -against- REACH EVENT MARKETING LLC, Applicant	Opposition No. 91168845 Mark: GROWL TOWEL App. Serial No. 78/522,183 Filed: Nov. 23, 2004

BOX TTAB FEE ENCLOSED
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY ELECTRONIC MAIL TO THE TRADEMARK TRIAL AND APPEAL BOARD, UNITED STATES PATENT AND TRADEMARK OFFICE ON MARCH 3, 2006.

JASON M. THEOBALD

/s/ Jason M. Theobald, Esq.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Reach Event Marketing, LLC ("Applicant"), by it undersigned attorneys, hereby answers the Opposition in accord with the Federal Rules of Civil Procedure wherever applicable or appropriate, and as required by Trademark Rules 2.106(b) and 2.114(b) as follows:

1. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 1, and it is therefore denied.

2. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 2, and it is therefore denied.

3. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 3, and it is therefore denied.

4. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 4, and it is therefore denied.

5. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 5, and it is therefore denied.

6. Applicant is without sufficient knowledge or information at this point to form a belief as to the truth of Paragraph 6, and it is therefore denied.

7. Applicant denies all allegations contained in paragraph 7.

8. Applicant denies all allegations contained in paragraph 8.

9. Applicant denies all allegations contained in paragraph 9.

10. Applicant denies all allegations contained in paragraph 10.

11. Applicant admits that the Panthers are identified as the owner of record of Reg. No. 2,224,986 by way of assignment from Richardson Sports Limited Partnership a related company or licensee/licensor ("Richardson") of Opposer in the online records of the U.S. Patent and Trademark Office ("USPTO"). Except as so admitted, Applicant denies the allegations contained in Paragraph 11.

12. Applicant admits that it seeks to register the designation GROWL TOWEL, Serial No. 78/522,183, but denies all other allegations contained in Paragraph 12.

13. Applicant denies all allegations contained in Paragraph 13, and affirmatively states that the specimen submitted for the application and the attached advertisement to the Opposer's Opposition do not make reference to professional football in general nor to the Panthers.

14. Applicant denies all allegations contained in Paragraph 14, and affirmatively states that when it filed the original specimen in support of the GROWL TOWEL application it was using the term "WHO DOO" in connection therewith. Since that time, Applicant has abandoned all use of the term "WHO DOO" and has submitted a corrected specimen in support of the application for the GROWL TOWEL mark (*See* Exhibit "A" attached hereto and hereby incorporated by reference).

15. Applicant admits that it is seeking registration for the mark GROWL TOWEL for use in connection with "towels" but denies the allegations contained in Paragraph 15.

16. Applicant denies all allegations contained in Paragraph 16.

17. Applicant denies all allegations contained in Paragraph 17.

18. Applicant denies all allegations contained in Paragraph 18.

AFFIRMATIVE DEFENSES

In further Answer to the Petition, Applicant asserts the following affirmative defenses:

First Defense
Failure to State a Claim

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

Second Defense
No Likelihood of Confusion

2. There is no likelihood of confusion between the origin of Applicant's products and services and the products and services of Opposer.

3. The prosecution history of the original GROWL TOWEL and the Opposer's mark PROWL TOWEL demonstrates that the marks co-existed together for close to eight years without one incident or complaint brought regarding mistake, confusion, deception, false connection, misleading use, or the like.

4. The Marks exist and are used in separate and distinct geographical markets based on the fact that the fan base distribution of each team is limited to a certain geographical location.

5. At no time during the filing of GROWL TOWEL, Serial No. 78/522,183, did the USPTO cite the PROWL TOWEL mark against the filing.

Third Defense
Good Faith

6. Applicant affirmatively states that it seeks to register the GROWL TOWEL mark based on the fact that Applicant's affiliated company, formerly Reach Publishing Systems, Inc. now known as Reach-SR, LLC ("Reach"), was a good faith

purchaser for value from Jack "John" Homsey (Vice President of Black Cat) and Rodger Homsey (Director of Black Cat) of the original GROWL TOWEL as evidence by the Assignment Agreement, Letter of Agreement, and Corporate Information for Black Cat. (*See* Exhibits "B","C", & "D") attached hereto and hereby incorporated by reference).

7. Based on its good faith belief that it acquired right and title to the original GROWL TOWEL registration (which achieved registration just sixteen (16) days after Opposer instituted their first use of the PROWL TOWEL mark) Applicant used the mark in commerce.

8. In line with its good faith belief Applicant also attempted to file a Section 8 Declaration and a Section 9 Renewal on July 7, 2003 with the USPTO which was denied by Office Action on July 27, 2004, that would have prevented the Mark from being cancelled on July 28, 2005.

Fourth Defense
Priority

9. Reach claims priority use of the mark GROWL TOWEL, in both its local market and throughout the United States, through its attempted good faith purchase of the original GROWL TOWEL registration.

Fifth Defense
Laches

10. Opposer's claims are barred, in whole or in part, under the doctrine of laches. Opposer knew or should have known of the original GROWL TOWEL mark and failed to challenge that mark.

Sixth Defense
Acquiescence

11. Opposer's conduct of not asserting claims against Homsey or Black Cat's use of the GROWL TOWEL amounts to acquiescence, thus, Opposer should be estopped from asserting their claim.

Seventh Defense
Unclean Hands

12. As alleged below, in Applicant's Counterclaim, Opposer should not be entitled to relief where such relief would rely upon inequitable conduct committed on or before the USPTO.

Applicant reserves right to plead additional affirmative defenses.

COUNTERCLAIM

13. Pursuant to 15 U.S.C. §1064 and 37 CFR §2.106(b)(2), Applicant, Reach Event Marketing LLC (hereinafter "Applicant"), believes it will be damaged by continued registration of Registration No. 2,224,986, issued to Opposer, Panthers Football LLC (hereinafter "Opposer"), for the mark PROWL TOWEL in International Class 24, and hereby petitions to cancel said registration in its entirety. As grounds for the Counterclaim, Applicant alleges as follows:

14. Applicant is a limited liability company organized and existing under the law of Ohio with its principal place of business at 9933 Alliance Road, Cincinnati, Ohio 45242, and an affiliate of Reach Publishing Systems, Inc. now known as Reach-SR, LLC.

15. Applicant is the owner of pending Application Serial No. 78/522,183 for the mark GROWL TOWEL.

16. Upon information and belief Opposer Panthers Football LLC ("Panthers") is a limited liability company organized and existing under the law of North Carolina with its principal place of business at 800 South Mint Street, Charlotte, North Carolina 28202, which owns and operates a professional football team, providing entertainment services to the public in the form of competitive professional football games.

17. Upon information and belief Opposer NFL Properties LLC ("NFLP") is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 280 Park Avenue, New York, New York 10017.

18. Upon information and belief Opposer is the owner of the PROWL TOWEL mark Reg. No. 2,224,986 filed January 6, 1997 and registered with the USPTO on February 23, 1999.

19. Applicant has standing to assert this Counterclaim by virtue of the fact that Opposer has pleaded Reg. No. 2,224,986 against Applicant in the above referenced Opposition against Application Serial No. 78/522,183.

20. Applicant is or will be damaged by the continued registration of Reg. No. 2,224,986, because the Opposer has pleaded said registration against Applicant in the present Opposition on the grounds of likelihood of confusion. Although Applicant denies that any likelihood of confusion or dilution will result by virtue of the parties' respective marks and uses, in the alternative, assuming a finding is made that the Applicant's mark so resembles Opposer's mark as to be likely to cause confusion or result in dilution, Applicant submits that a finding of likelihood of confusion or dilution will be avoided if Reg. No. 2,224,986 is cancelled in whole or in part as sought by Applicant. [1]

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[1] Applicant has strenuously denied that any likelihood of confusion exists between the parties' respective marks and uses, and defended the present opposition accordingly. However, claims

Count I

Cancellation of Trademark Registration Based Upon Fraud

21. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein, and further states as follows:

22. Upon information and belief, Opposer committed fraud on the PTO when it filed its application for the PROWL TOWEL on January 6, 1997, which was five days after the original GROWL TOWEL had achieved registration with the USPTO on January 1, 1997.

23. Upon information and belief, Opposer, by and through its related company or licensee/licensor Richardson having the same address as Opposer located at 800 South Mint Street, Charlotte, NC 28202-1502, verified its signature, or that of its agent, on the Application Affidavit under the following declaration:

> "The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; *to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.*"

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and defenses may be asserted in the alternative or hypothetically, regardless of consistency. *See* FRCP 8(e), 37 CFR §2.116 and TBMP §312.03.

> "The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true."

24. At the time Richardson, a related company or licensee/licensor of Opposer, filed the Application Affidavit with the USPTO, it knew or should have known that the mark GROWL TOWEL had already been filed and registered with the USPTO. Therefore, Richardson's statement verifying the submission of the Application Affidavit with the USPTO was false and Opposer, through Richardson, knowingly attempted to mislead the USPTO by this statement.

25. The USPTO relied on the veracity of the contents of Richardson's Application Affidavit when it accepted same to allow Richardson to file and register the mark PROWL TOWEL with the USPTO. Therefore, Richardson's false statement concerned a fact material to the USPTO's determination that the registration was entitled to registration.

26. Based upon the foregoing, Opposer fraudulently procured the registration of the PROWL TOWEL mark; therefore, Reg. No. 2,224,986 should be cancelled in its entirety.

27. Pursuant to 15 U.S.C. §1064, Applicant believes it is or will be damaged by the continued registration of Reg. No. 2,224,986 for the PROWL TOWEL mark and hereby requests the court to cancel said registration on the grounds of fraud pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. §1064.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice; that Opposer's Registration No. 2,224,986 be cancelled in its entirety; that the Trademark Trial and Appeal Board grant such further relief as it deems just and appropriate; and that the United States Patent and Trademark Office issue a Notice of Allowance in favor of application Serial No. 78/522,183.

Please address all communications to Applicant's counsel of record.

DATED this 3rd day of March, 2006.

Respectfully Submitted,

By: /s/ Jason M. Theobald, Esq.

Jason M. Theobald
ReachUSA
General Counsel
9933 Alliance Road
Cincinnati, Ohio 45242
(513) 794-4151

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer has been served upon Opposer by transmitting a copy of the document by first class mail, addressed to Jessica A. Rose, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, counsel for the Opposer, on this 3rd day of March, 2006.

/s/ Jason M. Theobald, Esq.
Counsel for Applicant
Reach Event Marketing LLC

GROWLTOWEL.COM

TRADEMARK ASSIGNMENT

ASSIGNOR: John Homsey

ASSIGNEE: Reach Publishing Systems, Inc.

Trademark: **GROWL TOWEL** Registration No. **2032473** Filing Date _____

Whereas, John Homsey (hereinafter Homsey), having his business office at 4801 E. Independence Blvd Charlotte, North Carolina 28212 is owner of the Growl Towel trademark (Registration No. 2032473) for towels issued January 21, 1997 therefore; and

Whereas, Homsey represents and warrants that it is the owner of the entire right, title and interest in and to the said trademark and said registration therefore; and

Whereas, Reach Publishing Systems, Inc. (hereinafter RPSI) an Ohio corporation, having its principal residence of business at 9933 Alliance Road, Cincinnati, OH 45242, is desirous of acquiring said trademark and said registration;

Now therefore, for good and valuable consideration, the adequacy and receipt of which is acknowledged, Homsey does hereby sell, assign, transfer and set over unto RPSI, its entire right, title and interest in and to the said mark GROWL TOWEL for towels together with the goodwill of the business symbolized by said trademark, and Registration No. 2032473 for said trademark.

Homsey by this agreement hereby conveys to RPSI the right to sue third parties for past infringement of said mark.

John Homsey

STATE OF Florida)

COUNTY OF Pinellas)

On this 24th day of March, 2001 before me personally appeared John Homsey, known to me to be the Assignor above named, appeared before me and acknowledged this instrument as free and voluntary act for the purpose set forth.

Notary Public

My Commission Expires: 1/18/08

MICHAEL J. FAZZIO
MY COMMISSION # DD 251277
EXPIRES: January 18, 2008
Bonded Thru Budget Notary Services

June 23, 2003

Post-it® Fax Note 7671	Date 6/23/03	# of pages ▶ 2
To Rodger Homsey	From	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 235-2315	Fax #	

Mr. Rodger Homsey
7200 Royal Green Drive
Cincinnati, OH 45244

Dear Rodger,

This letter serves to confirm our agreement on the acquisition of trademark rights in the federal mark GROWL TOWEL. Reach Publishing Systems, Inc. (RPSI) will acquire full ownership rights in the federally registered mark GROWL TOWEL, with registration number 2032473. You will provide whatever documentation necessary to transfer ownership to RPSI.

In consideration for full and complete assignment of this mark, RPSI will provide to you payment in the form of a commission on each towel sold and revenue received using the mark in the following payment structure:

Payment Per Towel (in cents)	Volume of Towels Sold
18	1-12,000
25	12,000-18,000
35	18,500-45,000
50	45,000-75,000
28	75,000 +

RPSI shall have no obligation to produce such towels, but has every intention of using its best efforts to produce and sell towels at various sporting events. This payment structure shall continue for a period of two years. An accounting and payment shall be provided annually, but will be fully reconciled after 24 months based on the above payment structure. In the event RPSI sells towels using a name other than GROWL TOWEL, no commission payment shall be required.

RPSI and Homsey agree to either continue the above payment structure after the first 24 months or negotiate a one-time buyout fee within 30 days of June 23, 2005.

Reach Publishing Systems, Inc.
REACH® MAGAZINE NATIONAL HEADQUARTERS
9933 Alliance Road • Cincinnati, Ohio 45242 • Phone: (513) 794-4100 • Fax: (513) 794-4139

Should RPSI or its charity, The Anthony Munoz Foundation, pursue any legal action to stop or request a use rights fee from any entity that is using the GROWL TOWEL trademark, Rodger Homsey will not receive any commission on this revenue.

If you are in agreement with the terms of this letter, please sign and date where indicated below. I'm looking forward to creating a great business opportunity with you in selling the GROWL TOWEL at sporting events this year.

Yours truly,

Robert J. Slattery
Reach Publishing Systems, Inc.

I agree with the terms of this Agreement.

Rodger Homsey

6/23/03
Date

CAR5

STATE OF NORTH CAROLINA
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REPORT DUE DATE- 06-29-1995

CORP ID- 0 3 6 7 1 9 2

FILING NO- A 0 0 1

NOTICE DATE- 04-30-1995

STATE OF INC- NC

DATE OF INC- 04-10-1995

1. REGISTERED AGENT & REGISTERED OFFICE MAILING ADDRESS

BLACK CAT PRODUCTIONS, INC.
C/O THOMAS J GORMAN
7422 CARMEL EXECUTIVE, PARK, SUITE 200
CHARLOTTE NC 28226

ENTER AGENT NAME & MAILING ADDRESS CHANGE HERE -

Mark Strickland

2. STREET ADDRESS OF REGISTERED OFFICE

7422 CARMEL EXECUTIVE, PARK, SUITE 200
CHARLOTTE NC 28226
COUNTY - MECKLENBURG

ENTER STREET ADDRESS CHANGE HERE -

9933 Ridgemore Drive
Charlotte, NC 28277

3. IF REGISTERED AGENT CHANGED, SIGNATURE OF NEW AGENT

Mark Strickland

SIGNATURE CONSTITUTES CONSENT TO APPOINTMENT

4. ENTER PRINCIPAL OFFICE ADDRESS HERE - BLACK CAT PRODUCTIONS, INC.

ADDR- 9933 Ridgemore Drive
CITY- Charlotte ST- NC ZIP- 28277

5. ENTER FEDERAL EMPLOYER ID NUMBER HERE - NUMB- 56-1945292

6. ENTER NAME, TITLE AND BUSINESS ADDRESS OF PRINCIPAL OFFICERS HERE -

NAME- Mark Strickland ADDR- 2000 W. 1st Street, Suite 405
TITLE- President CITY- Winston-Salem ST- NC ZIP- 27104

NAME- Jack Homsey ADDR- 12109 Prails Mill Lane
TITLE- Vice-President CITY- Charlotte ST- NC ZIP- 28262

NAME- Scott Coffman ADDR- 4715 East Independence Boulevard
TITLE- Secretary CITY- Charlotte ST- NC ZIP- 28212

NAME- Frank Rubino ADDR- 9933 Ridgemore Drive
TITLE- Treasurer & Chief Operating Officer CITY- Charlotte ST- NC ZIP- 28277

7. ENTER NAME AND BUSINESS ADDRESS OF DIRECTORS HERE - ATTACH 2ND PAGE IF NECESSARY

NAME- Mark Strickland ADDR- 2000 W. 1st Street, Suite 405
CITY- Winston-Salem ST- NC ZIP- 27104

NAME- Jack Homsey ADDR- 12109 Prails Mill Lane
CITY- Charlotte ST- NC ZIP- 28262

NAME- Frank Rubino ADDR- 9933 Ridgemore Drive
CITY- Charlotte ST- NC ZIP- 28277

8. BRIEFLY DESCRIBE THE NATURE OF ITS BUSINESS OR ACTIVITIES - Sales of NFL (CAROLINA PANTHERS, MEMORABILIA - MAINLY - RALLY RAG CALLED "TOWEL"

BLACK CAT PRODUCTIONS, INC.

9. IF NONPROFIT,
ARE THERE MEMBERS?
YES ___
NO ___

10. SIGNED- Mark Strickland DATE- 1/10/96
(FORM MUST BE SIGNED BY OFFICER OF CORPORATION)

NAME- Mark Strickland TITLE- President
TYPE OR PRINT NAME AND TITLE

This form should be returned by the DUE DATE shown above with a check for $10.00 to:
SECRETARY OF STATE, ANNUAL REPORT SECTION, POST OFFICE 29525, RALEIGH NC 27626-0525.

CAR5

7. ENTER NAME AND BUSINESS ADDRESS OF DIRECTORS

NAME-	Scott Coffman	4715 East Independence Boulevard Charlotte, NC 28212
NAME-	Byron Carr	5001 #0 Endolwood Road Charlotte, NC 28215
NAME-	Greg Homsey	4801 East Independence Boulevard # 710 Charlotte, NC 28212
NAME-	Rodger Homsey	1941 Bishop Lane # 108 Louisville, KY 40218