

ESTTA Tracking number: **ESTTA171287**

Filing date: **10/26/2007**

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

Proceeding	91170135
Party	Defendant R & R Partners Inc.
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Date	10/26/2007
Attachments	R&R Answer 91170135.pdf (6 pages)(182098 bytes)

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

Mark: WHAT HAPPENS HERE STAYS HERE
Published for Opposition: Nov. 29, 2005
International Class 035

DOROTHY TOVAR,

Opposer,

vs.

R & R PARTNERS, INC.,

Applicant.

Opposition No.: 91170135

Serial No.: 76/582,191

BOX TTAB NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

ANSWER TO NOTICE OF OPPOSITION

Applicant, R & R Partners, Inc. ("Applicant"), hereby answers the Notice of Opposition filed by Opposer, Dorothy Tovar ("Opposer"):

1. In response to paragraph 1 of the Notice of Opposition, Applicant denies that Opposer is the owner of the federally registered trademark WHAT HAPPENS IN VEGAS STAYS IN VEGAS ("WHIVISV") for use on various clothing items. Applicant further denies that Opposer's WHIVISV mark is registered under Registration Nos. 2,930,998 and 2,986,162, both of which were cancelled on October 1, 2007.

2. In response to paragraph 2 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the allegations in said paragraph, and on that basis denies such allegations.

3. In response to paragraph 3 of the Notice of Opposition, Applicant admits that on March 22, 2004 it filed Application Serial No. 76/582,191 for WHAT HAPPENS HERE STAYS HERE (“WHHSH”) for “advertising, public relations” based on use of the WHHSH mark in commerce since December 2002. Applicant denies that it claimed it first used the mark in commerce in December 2003.

4. In response to paragraph 4 of the Notice of Opposition, Applicant admits that it is an integrated marketing communications firm whose services include advertising and public relations. Applicant further admits that it developed and created for Las Vegas Convention and Visitors Authority (“LVCVA”) an advertising campaign, launched in December 2002, that uses the WHHSH mark to promote Las Vegas, Nevada as a tourist destination. Applicant denies that LVCVA launched its advertising campaign in December 2003. Applicant denies the remaining allegations in paragraph 4.

5. In response to paragraph 5 of the Notice of Opposition, Applicant admits that it alleged in *R&R Partners, Inc. v. Tovar*, CV-N-04-0145-LRH that Opposer’s use of the WHIVSIV mark infringed its rights in the WHHSH mark. Applicant denies that Opposer’s WHIVSIV mark is federally registered. The remaining allegations in said paragraph are statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the remaining allegations in paragraph 5.

6. In response to paragraph 6 of the Notice of Opposition, Applicant admits that Opposer filed a counterclaim for declaratory relief in *R&R Partners, Inc. v. Tovar*, CV-N-04-0145-LRH seeking, among other things, declarations from the Court that (1) Opposer’s use of the WHIVSIV mark “does not infringe, dilute, constitute unfair competition or deceptive trade practices, or otherwise violate any rights R&R . . . may have in the WHAT HAPPENS HERE

STAYS HERE mark” and (2) Applicant “has no right to register WHAT HAPPENS HERE STAYS HERE as a trademark.” Applicant denies the remaining allegations in paragraph 6.

7. Paragraph 7 contains statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 7.

8. Applicant denies the allegations in paragraph 8 of the Notice of Opposition.

9. In response to Paragraph 9 of the Notice of Opposition, Applicant admits that the specimen submitted in support Application Serial No. 76/582,191 is an advertising script written for a radio broadcast. The remaining allegations in said paragraph are statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the remaining allegations in paragraph 9.

10. In response to paragraph 10 of the Notice of Opposition, Applicant admits that the First Amended Complaint filed in *R&R Partners, Inc. v. Tovar*, CV-N-04-0145-LRH alleges, among other things, that Applicant designed an advertising campaign using the WHHSH mark “for the benefit of LVCVA.” Applicant denies the remaining allegations in paragraph 10.

11. In response to paragraph 11 of the Notice of Opposition, Applicant admits that the First Amended Complaint filed in *R&R Partners, Inc. v. Tovar*, CV-N-04-0145-LRH alleges, among other things, that the WHHSH mark is used “to widely promote Las Vegas throughout the United States.” Applicant denies the remaining allegations in paragraph 11.

12. In response to paragraph 12 of the Notice of Opposition, Applicant admits that the First Amended Complaint filed in *R&R Partners, Inc. v. Tovar*, CV-N-04-0145-LRH alleges, among other things, that the WHHSH mark “became recognized throughout the United States and relied upon by consumers for advertising and promotion for the [sic] Las Vegas.” Applicant denies the remaining allegations in paragraph 12.

13. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 of the Notice of Opposition, and on that basis denies such allegations.

14. In response to paragraph 14 of the Notice of Opposition, Applicant denies that it “falsely declared in its application to register WHHSH that it uses the WHHSH slogan in commerce.” The remaining allegations in said paragraph are statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the remaining allegations in paragraph 14.

15. In response to paragraph 15 of the Notice of Opposition, Applicant admits that Opposer filed a Letter of Protest on March 21, 2005 arguing that Application Serial No. 76/582,191 should not have been published for opposition. Applicant further admits that Opposer attached a copy of its Letter of Protest as Exhibit C to the Notice of Opposition.

16. In response to paragraph 16 of the Notice of Opposition, Applicant admits that Opposer’s Letter of protest was denied by the Administrator for Trademark Classification and Practice. Applicant further admits that Opposer attached a copy of the denial of Opposer’s Letter of Protest as Exhibit D to the Notice of Opposition.

17. In response to paragraph 17 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegation that “LVCVA alleges that it assigned the WHHSH slogan and its goodwill to Applicant,” and on that basis denies such allegation. The remaining allegations in said paragraph are statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the remaining allegations in paragraph 17.

18. Paragraph 18 contains statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 18.

19. In response to paragraph 19 of the Notice of Opposition, Applicant admits that LVCVA (the current owner of the WHHSH mark) and Opposer are currently engaged in on-going litigation over Opposer’s right to use the WHIVSIV mark and LVCVA’s right to register the WHHSH mark. Applicant further admits that Opposer attached a copy of Applicant’s First Amended Complaint and Opposer’s Answer and Counterclaims filed in *R&R Partners, Inc. v.*

Tovar, CV-N-04-0145-LRH as Exhibits A and B to the Notice of Opposition. The remaining allegations in said paragraph are statements and conclusions of law to which no response is required. To the extent a response is required, Applicant denies the remaining allegations in paragraph 19.

AFFIRMATIVE DEFENSES

20. Opposer has failed to state a claim upon which any relief can be granted.
21. Opposer is barred from bringing the opposition for lack of standing.

WHEREFORE, Applicant prays:

1. That Opposer's Notice of Opposition be dismissed with prejudice;
2. That Applicant's Application Serial No. 76/582,191 be allowed; and
3. That any such further relief be granted Applicant as may be deemed appropriate.

It is believed that no fee is due. If this is incorrect, the Commissioner is hereby authorized to charge any fees which may be required to **Deposit Account No. 03-1952**.

Respectfully submitted,

Dated: October 26, 2007

By:


Douglas L. Hendricks
Attorney for Applicant R&R Partners, Inc.

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PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

ANSWER TO NOTICE OF OPPOSITION

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Michael S. Wilcox
Daniel N. Ballard
McDonough Holland & Allen PC
555 Capital Mall, 9th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 26th day of October, 2007.

Dennis Labaria
(typed)



(signature)