

ESTTA Tracking number: **ESTTA118306**

Filing date: **01/06/2007**

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

Proceeding	91173105
Party	Defendant Dalton, Michael Dalton, Michael Box 18137 670 Northland Blvd Cincinnati, OH 452180137
Correspondence Address	Michael Dalton Box 18137 670 Northland Blvd Box 18137 Cincinnati, OH 45218-0137
Submission	Answer
Filer's Name	Michael Dalton
Filer's e-mail	DALTONME@hotmail.com, DealerDashboard@hotmail.com
Signature	/ Michael Dalton /
Date	01/06/2007
Attachments	AnswerTrademark001.pdf (5 pages)(221697 bytes)

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

Honda Motor co., Ltd

Plaintiff

Opposition no. **91173105**
Application no. **78339571**

v.

Michael Dalton

ANSWER

Defendant

ANSWER
TO
OPPOSER, HONDA MOTOR CO., LTD
NOTICE OF OPPOSITION

Now comes applicant, Michael Dalton, pursuant to 337 C.F.R PART 2.106 and hereby presents his answer to opposer, Honda Motor Co., LTD, notice of opposition to applicant's trademark / servicemark **DealerDashboard**.

1. Applicant, as to 1, admits that he has filed an application for registration of the mark **DealerDashboard** and states that the application was made some three years ago on December 11, 2003 after exclusive and continuous use of the source identifier and organizational servicemark **DealerDashboard** beginning October 5, 1999. Since October 5, 1999 the applicant has acquired the domain name **DealerDashboard** and **Dealer-Dashboard** with TLD extension's **.com, .net, .org, .biz, .info, .us, .ws, .co.uk**, (see exhibit A).

2. Admits, as to 2, that application was published for opposition, but denies that opposer has timely filed an opposition as the Board lacks jurisdiction over the opposer. The opposer, an alleged corporation organized under the laws of Japan, located and doing business at 1-1, 2-Crome, Minami-Aoyama, Minato-Ku, Tokyo 107-8556 JAPAN is not within the districts for which this board has jurisdiction, nor, has the opposer claimed protection under Title XII – The MADRID PROTOCOL. The applicant further states that the applicant is prejudice as the board is without jurisdiction to compel discovery or subpoena witness from opposer and hereby moves to dismiss opposer’s opposition for lack of jurisdiction.

3. Applicant, as to 3, is without sufficient knowledge to admit or deny.

4. Applicant, as to 4, admits that opposer attempted to use the terms dealer dashboard some six years after applicant’s exclusive use. The applicant further states, through extra-judicial measures, he succeeded in a cease and desist demand on the infringement of applicants service mark by opposer. The opposer attempted to confuse the consumer, and exploit the brand recognition of applicant’s service mark by publishing and appearing in search engines at a non-secure web page under the term dealer dashboard.

5. Applicant, as to 5, admits that opposer attempted to use the terms dealer dashboard. The applicant further states, through extra-judicial measures, he

succeeded in a cease and desist demand on the infringement of applicants service mark, DealerDashboard, by opposer. The opposer attempted to confuse the consumer, and exploit the brand recognition of applicant's service mark by publishing and appearing in search engines at a non-secure web page under the term dealer dashboard.

6. Applicant is without sufficient knowledge regarding the method or tools for which opposer attempted to confuse the consumer by the utilization of applicants service mark. Applicant denies the mark DealerDashboard is generic.
7. Agreed and further states that applicant can also bring action against opposer for Meta theft and reverse domain hijacking.
8. Denied
9. Applicant denies and further states for the board to believe opposer's outlandish accusations the board would have to conclude that the applicant engaged in perjury and that after extensive documented communication (see exhibit B) with the examination trademark attorney, Patty Evanko, Law office 112, (703) 308-9112, ext 163, patty.evanko@uspto.gov, Ms. Evanko failed to perform the due diligence before recommendation for publication. The applicant has not committed perjury and Ms. Evanko made several denials on terms of use prior to acceptance and recommendation for publication (see attachment B). Applicant

further states that opposer is merely and frivolously engaged in a fishing expedition aimed to defame, distort, and infringe upon the applicant, Michael Dalton and the organization **DealerDashboard**.

10. The applicant denies all allegations not admitted to above and further reserve the right to amend his answer through the course of discovery.

Affirmative Defense

1. Lack of jurisdiction and failure to state a claim upon which relief can be granted.
The opposer is not within the jurisdiction of this board and to proceed would prejudice applicant.
2. Waiver. The applicants registration of the servicemark, DealerDashboard, was delayed due to a conflict for which applicant prevailed, (see exhibit D). The opposer, Honda, after recommendation for publication on June 29, 2004, failed to file a timely opposition to the term Dealer Dashboard in case serial-no. 7630506 and therefore waved their alleged rights to the term DealerDashboard, (see exhibit D).
3. The applicant asserts all affirmative defenses and reserve the right to amend these affirmative defenses through the course of discovery.

Wherefore:

The applicant has invested extensive time and resources building the non-generic brand **DealerDashboard** as a source identifier and has acquired the distinctive recognition by **ranking.com**, as being within the top 25 % of all the top 1,000,000 websites and ranked number 28 in the category shopping/Automotive/Buyers_Services, (see exhibit E). Additionally, the applicants distinct brand ranks number one under the search term **DealerDashboard** and **Dealer Dashboard** on the search engines Goggle, (see exhibit F), AOL, (see exhibit G), Yahoo, (see exhibit H) and, as such, has become alternatively distinctive and famous within the automotive industry.

Therefore:

The opposer's opposition should be dismissed as lack of jurisdiction, failure to state a claim upon which relief can be granted, wavier and the application for trademark / servicemark should be granted as a qualifying mark and source identifier, domain name or alternatively as a famous mark within the automotive industry.

Respectfully submitted,



Michael Dalton, prose
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901