

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

In the Matter of Application Serial No. 78/657412  
For the mark: BAJA  
Filing Date: June 23, 2005  
Publication Date: October 10, 2006

John Hindaly,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91174655
	)	
Donn K. Harms,	)	
	)	
Applicant.	)	
	)	

**APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES  
TO NOTICE OF OPPOSITION**

APPLICANT, by and through its attorney of record, Karen Convery, hereby submits the Answer and Affirmative Defenses to the Notice of Opposition of Opposer, John Hindaly, as follows:

1. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefor denies them.
2. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefor denies them.



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3. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefor denies them.

4. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefor denies them.

5. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefor denies them.

6. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefor denies them.

7. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefor denies them.

8. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefor denies them.

9. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefor denies them.

10. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefor denies them.

11. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and therefor denies them.

12. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefor denies them.

13. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and therefor denies them.

14. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and therefor denies them.

15. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 and therefor denies them.

16. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and therefor denies them.

17. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and therefor denies them.

18. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 and therefor denies them.

19. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefor denies them.

20. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 and therefor denies them.

21. Applicant denies the allegations of Paragraph 21.

22. Applicant admits Opposer filed an intent to use based application with the United States Patent and Trademark Office to register the mark VAJA on April 17, 2006, for Class 014; however, Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and therefor denies them.

23. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 23 and therefor denies them.

24. Applicant admits the Allegations of Paragraph 24.

25. Applicant admits that on June 23, 2005, Applicant filed trademark application Serial No. 78/657,412 with the United States Patent and Trademark Office to register the mark BAJA in connection with, "Coin purses; tote bags; sports bags; backpacks; shoulder bags; beach bags; duffel bags; handbags; cosmetic bags sold empty; briefcases; briefcase type portfolios; catalog cases; all purpose carrying bags; roll bags; wallets; luggage, namely, suitcases with and without wheels; umbrellas," and, as of the

date of filing of this Answer, an Amendment to Allege Use has not been filed.

26. Applicant lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 and therefor denies them.

27. Applicant denies the allegations of Paragraph 27.

28. Applicant denies the allegations of Paragraph 28.

#### **AFFIRMATIVE DEFENSES**

29. The Notice of Opposition fails to state a claim upon which relief may be granted.

30. Further investigation and discovery may reveal Opposer lacks standing upon which to oppose the registration.

31. Further investigation and discovery may reveal Opposer is barred by the doctrine of unclean hands.

32. Opposer is barred from asserting a claim against Applicant under the theories of laches, acquiescence and/or estoppel.

33. Further investigation and discovery may reveal Opposer has abandoned any rights he may have had in his alleged marks through non use and/or through acts which cause the marks to lose their significance as an indication of origin and/or through failure to use the mark in connection with all of the goods set forth in Opposer's registrations and Applications for registration.

34. Opposer's alleged marks are not inherently distinctive, have not become distinctive, have attained no secondary meaning and are diluted.

35. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, Opposer's alleged marks and Applicant's mark are different in sound, appearance, and connotation and for other reasons are not confusingly similar.

36. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, Opposer's alleged goods and the goods of Applicant are noncompetitive and unrelated.

37. There is no likelihood of confusion, mistake, deception or potential damages as alleged by Opposer because, inter alia, the goods of Applicant are sold in a trade channels and territory remote from plaintiff's alleged usage.

38. Applicant reserves the right to add additional affirmative defenses as they may become known during the course of this proceeding.

Respectfully submitted,

January 29, 2007

By:   
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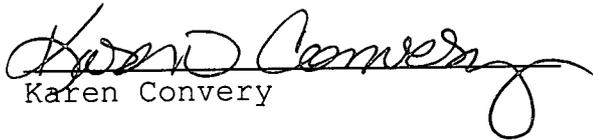
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**CERTIFICATE OF MAILING**

I hereby certify that this APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service, postage fully prepaid, addressed to:

U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dated: January 29, 2007

  
Karen Convery

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION was served upon Opposer by mailing the same, first-class mail, postage fully prepaid to:

Celeste Sharpe, Esq.  
RAHDERT, STEELE, BOLE & REYNOLDS, P.A.  
535 Central Avenue  
St. Petersburg, FL 33701

this 29<sup>th</sup> day of January, 2007.

January 29, 2007

By:   
Karen Convery