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

Proceeding	91177192
Party	Defendant Martanna LLC Martanna LLC 16703 Ostenbury Court Dumfries, VA 22026
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Date	06/18/2007
Attachments	int11E.PDF (6 pages)(58811 bytes)

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

NAUTICA APPAREL, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91177192
v.	)	
	)	
MARTANNA LLC,	)	
	)	
Applicant.	)	

ANSWER

Applicant Martanna L.C. (previously, incorrectly referred to as Martanna LLC, and hereinafter referred to as "Martanna" or "Applicant"), by counsel and for its response to Opposer Nautica Apparel, Inc.'s ("Opposer") Notice of Opposition Pursuant to 15 U.S.C. § 1063 (the "Opposition"), states as follows:

1. Denied.

2. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Opposition and therefore Applicant denies the allegations, demanding strict proof thereof.

3. Applicant admits only that it is a Virginia limited liability company doing business in Virginia at 16703 Ostenbury Court, in Dumfries. Applicant denies the remainder of the allegations, and further states that the company name is "Martanna L.C." and its zip code is 22025.

4. Admitted.

5. The allegations in Paragraph 5 of the Opposition assert legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied and Applicant demands strict proof thereof.

8. [*sic*] Applicant is without sufficient information to admit or deny that "Opposer's Goods and Services have been widely advertised, offered for sale and sold throughout the United States under Opposer's Marks", and therefore Applicant denies these allegations and demands strict proof thereof. Applicant denies that "Opposer's Marks are famous."

6. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Opposition and therefore Applicant denies the allegations, demanding strict proof thereof.

7. Denied.

8. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Opposition and therefore Applicant denies the allegations, demanding strict proof thereof.

9. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Opposition and therefore Applicant denies the allegations, demanding strict proof thereof.

10. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Opposition and therefore Applicant denies the allegations, demanding strict proof thereof.

11. Applicant denies that "Opposer has priority." The remainder of the allegations in Paragraph 11 of the Opposition assert legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied and Applicant demands strict proof thereof.

12. Applicant is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Opposition and therefore Applicant denies the allegations,

demanding strict proof thereof.

13. Denied.

14. Applicant admits only that it did not seek the consent or permission of Opposer concerning Applicant's use of Applicant's Mark. The remainder of the allegations in Paragraph 14 of the Opposition are denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. All allegations not specifically admitted herein are denied.

DEFENSES

1. Opposer has failed to state a valid claim upon which relief can be granted as to all claims/allegations of the Opposition.

2. Opposer does not have standing to bring any of its claims based on the word mark applications, including the "NAUTICARE" application, that are allegedly pending before the United States Patent and Trademark Office.

3. Opposer does not have standing to bring a claim under Section 1052(d) of Title 15 of the United States Code based on the word mark applications, including the "NAUTICARE" application, that are allegedly pending before the United States Patent and Trademark Office.

4. Opposer does not have standing to bring a claim under Section 1125(c) of Title 15 of the United States Code based on the word mark applications, including the "NAUTICARE" application, that are allegedly pending before the United States Patent and Trademark Office.

5. Opposer is not entitled to the relief it seeks because Applicant's "GET NAUTI" mark does not consist of or comprise matter that is immoral, deceptive or scandalous.

6. Opposer is not entitled to the relief it seeks because Applicant's "GET NAUTI" mark does not consist of or comprise matter that may disparage or falsely suggest a connection with "Opposer's Marks", as that term is defined in Paragraph 5 of the Opposition (hereinafter referred to as "Opposer's Marks").

7. Opposer is not entitled to the relief it seeks because Applicant's "GET NAUTI" mark does not resemble any and/or all of Opposer's Marks. Applicant's "GET NAUTI" mark, therefore, is not likely - when used on or in connection with Applicant's goods - to cause confusion, or cause mistake or deceive.

8. Opposer is not entitled to any of its requested relief because purchasers are not likely to be confused or mistaken or deceived by Applicant's current and future use of its "GET NAUTI" mark relative to any and/or all of Opposer's Marks.

9. Opposer is not entitled to the relief it seeks because Applicant's current and future use of its "GET NAUTI" mark is not likely to cause confusion or mistake as to the origin, sponsorship, or approval of Applicant's goods.

10. Opposer is not entitled to the relief it seeks because Opposer's Marks – considered separately or together – are not "distinctive" as required by Section 1125(c) of Title 15 of the United States Code.

11. Opposer is not entitled to the relief it seeks because Opposer's Marks – considered separately or together – are not "famous" as required by Section 1125(c) of Title 15 of the United States Code.

12. Opposer is not entitled to the relief it seeks, even if Opposer's Marks – considered separately or together - are "famous" and "distinctive" pursuant to Section 1125(c) of Title 15 of the United States Code, because Applicant's current and future use of "GET NAUTI" is not likely to cause dilution of the alleged distinctive quality of any and/or all of Opposer's Marks.

13. Opposer's claims are barred because Opposer's Marks – considered separately or together – are functional.

14. Opposer's claims are barred because the equitable principals of laches, estoppel and acquiescence apply to this action.

15. Opposer's claims are barred due to the doctrine of waiver.

16. Opposer's claims are barred due to its own misconduct and unclean hands.

17. Opposer's claims are barred due to the doctrines of abandonment, erosion, functionality, fair use and/or good faith.

18. To the extent the evidence developed during discovery supports any of the following, Applicant reserves the right to rely upon the defenses of: fraud, illegality, *res judicata*, failure to mitigate, preemption, statute of limitations, statute of frauds, or any other matter constituting an avoidance or affirmative defense.

WHEREFORE, the foregoing considered, Applicant Martanna LLC respectfully requests that the Trademark Trial and Appeal Board (the "Board") enter an order dismissing Opposer Nautica Apparel, Inc.'s Opposition, and providing any other relief the Board deems just and appropriate.

Respectfully submitted,
Saul Ewing LLP

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Dated: June 18, 2007

CERTIFICATE OF SERVICE

I certify that on this day, June 18, 2007, a true and correct copy of the foregoing Answer was sent via first-class mail, postage pre-paid, to:

Stephen L. Baker
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

/Shannon H. Bates/_____
Shannon H. Bates