ESTTA Tracking number: **ESTTA209318**
Filing date: **05/05/2008**

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

Proceeding	91183140
Party	Defendant Whale Wash, LLC
Correspondence Address	WHALE WASH, LLC 10511 ILONA AVENUE LOS ANGELES, CA 90064 velizalde@hotmail.com
Submission	Answer
Filer's Name	Jose Martinez, Jr.
Filer's e-mail	jose@martinezlawpllc.com
Signature	/josemartinezjr/
Date	05/05/2008
Attachments	Whale Wash - Answer #145DBC[3] FINAL.pdf (5 pages)(83035 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK

OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 77205602

Filed By WHALE WASH, LLC on June 13, 2007

For the mark WHALE WASH

----------X

MOBY'S AUTO SPA, INC.

Opposer,

-against-

Opposition No.: 91183140

WHALE WASH, LLC.

Applicant.

----------X

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

The Applicant, WHALE WASH, LLC ("Applicant"), by his attorneys, MARTINEZ LAW, as and for its Answer to the Notice of Opposition (the "Opposition") of the opposer, MOBY'S AUTO SPA, INC. ("Opposer") herein respectfully alleges, upon information and belief, as follows:

AS AND FOR A RESPONSE TO THE OPPOSITION

1. Applicant admits the allegations contained within paragraph "1" to the Opposition.

2. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations regarding Opposer's alleged use of the mark contained within paragraph

"2" to the Opposition.

3. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraph "3" to the Opposition at least because Applicant is not aware that Opposer is in fact the owner of the registered mark referred to in paragraph "3" to the Opposition.

4. Applicant denies each and every allegation contained within paragraph "4" to the Opposition.

5. Applicant denies each and every allegation contained within paragraph "5" to the Opposition.

AFFIRMATIVE DEFENSES

6. The Opposition, and each cause of action set therein, fails to state facts sufficient to constitute a claim against the Applicant because Opposer fails to evidence how Applicant's mark is substantially similar to Opposer's mark such that it may cause a likelihood of confusion, or cause mistake or deceive purchasers and others as to the source or origin of Applicant's services. Applicant's mark and the pleaded marks of Opposer are not confusingly similar so as to establish a likelihood of confusion, mistake or deception to purchasers of the respective marks.

7. There is no likelihood of confusion because Applicant's mark is not substantially similar to Opposer's pleaded mark. Opposer's pleaded mark appears to stem from the fictional character, "Moby Dick", as is inferred by Opposer's company name, "Moby Auto Wash, Inc.", wherein the mark "A Whale of A Wash" references such fictional character and company name. Applicant's mark, "Whale Wash", on the other hand, makes no reference whatsoever to "Moby Dick" but rather references a large animal that lives in the ocean, thus inferring Applicant's capacity

to wash over-sized vehicles such as trucks, campers, semi-engines and diesel trucks. In addition, Opposer's mark references its unique design and construction which further enhances its ability to service over-sized vehicles. Opposer cannot possibly assume that any and all references to a "whale" immediately create a likelihood of confusion with the fictional character in "Moby Dick". Such an assumption is overbroad and overreaching and creates an unreasonable restraint on the use of the word "whale".

8. Applicant's mark does not cause mistake or deception to purchasers desiring Opposer's services. Opposer's services are provided in an entirely separate geographic region than the services of Applicant. Opposer is a corporation organized in the state of Kentucky and having its principle place of business in Portland, Maine. Applicant is a Nevada limited liability company with its principle place of business in Los Angeles, California. The two companies are literally on opposite sides of the country and the likelihood that purchasers would be confused as to the origin of either of they're services is very low.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark, Serial No. 77205602.

Whale Wash, LLC hereby appoints José Martinez, Jr. and Martinez Law, 76 Ninth Avenue, Suite 1110, New York, New York 10011, as its representative upon whom notices and process in proceedings affecting this proceeding may be served.

Respectfully submitted,

Whale Wash, LLC

Dated: May 5, 2008

By: /s/ Jose Martinez, Jr., Esq.

MARTINEZ LAW
Attorneys for Applicant
76 Ninth Avenue, Suite 1110
New York, New York 10011
(212) 566-4500 (telephone)
(212) 566-4542 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION to be served upon:

James F. Keenan, Jr.
BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle Street
Portland, ME 04104

by placing same in an envelope, properly sealed and addressed, with postage prepaid and depositing same with the United Sates Postal Service on this 5th day of May, 2008.

/josemartinezjr/
Jose Martinez, Jr., Esq.

Filed with the TTAB via
ESSTA on May 5, 2008