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

Proceeding	91184319
Party	Defendant Chicago Tribune Company
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Fox News Network, LLC	Opposition No. 91184319
Opposer,	
v.	Mark: RED EYE I (& Design)
Chicago Tribune Company, LLC	
Applicant.	Serial No.: 77/101,706

ANSWER TO AMENDED NOTICE OF OPPOSITION

Applicant, Chicago Tribune Company, LLC (“Chicago Tribune” or “Applicant”), through its attorneys, answers the Amended Notice of Opposition filed by Opposer Fox News Network, LLC (“Opposer”) in the above proceeding. For the Board’s convenience, the allegations of the Amended Notice of Opposition are repeated and then followed by Chicago Tribune’s response.

1. In the sworn Application, Tribune represented to the PTO that it had used the Subject Mark in commerce on the Internet and on cable television beginning in 2002 and 2006, respectively. But those statements were knowingly false. First, the Subject Mark has *never* been used in commerce on cable television within the meaning of the Trademark Act, 15 U.S.C. §§ 1051 and 1127. Indeed, the sworn testimony of several Tribune employees makes it abundantly clear that REDEYE has been used by Tribune on cable television *only* to promote the REDEYE newspaper.

Answer:

Applicant admits that it filed the Subject Application for the Subject Mark, which Subject Application speaks for itself. Applicant denies the remaining allegations of Paragraph 1.

2. Tribune also knowingly misrepresented its use of REDEYE on the Internet. Despite its sworn statement on the Application that it began using REDEYE in commerce on the Internet in October 2002, Tribune did not do so. Instead, until July 2006, Tribune operated the Internet website www.redeyechicago.com solely to promote the REDEYE newspaper. As such,

even if Tribune can be said to have used the Subject Mark in commerce as of July 2006 within the meaning of the Trademark Act, 15 U.S.C. §§ 1051 and 1127, Tribune knowingly misrepresented the date of first use in the Application.

Answer:

Applicant denies the allegations of Paragraph 2.

3. Further, Tribune knew the true manner in which REDEYE was used on both the Internet and cable television at the time it filed the Application. Indeed, Tribune employees testified under oath about the promotional and/or ancillary use of REDEYE on cable television and the Internet just one month after the Application was filed and before filing the Response to the PTO's Office Action. It is clear that the real reason Tribune filed and continues to pursue the Application is not that it uses REDEYE in commerce in the manner set forth in the Application, but rather that it seeks to harm FNC by seeking - and, indeed, obtaining - priority in registering the Subject Mark.

Answer:

Applicant admits that it knew the manner in which it used the Subject Mark at the time it filed the Subject Application. Applicant further admits that its employees testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 3.

4. FNC has been damaged by Tribune because the PTO has indicated that it will refuse FNC's application to register its own trademark on the basis of Tribune's fraudulent Application.

Answer:

Applicant denies the allegations of Paragraph 4.

5. It is, therefore, clear that Tribune has committed a fraud on the PTO and the Application should be denied.

Answer:

Applicant denies the allegations of Paragraph 5.

6. FNC is the owner and operator of the Fox News Channel, the number-one rated 24/7 national cable and satellite television news network in the United States. FNC's headquarters are in New York, New York.

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis denies those allegations.

7. Tribune owns and operates a free, regional, tabloid-style newspaper called REDEYE that is distributed in the Chicagoland area. Tribune owns federal trademark registrations for REDEYE and REDEYE I (& Design) for “newspapers for general circulation” (Reg. Nos. 2,921,483 and 2,918,012, respectively), which were issued by the PTO on January 25, 2005 and January 11, 2005, respectively (the “Tribune's Registrations”). The REDEYE newspaper was launched on October 30, 2002.

Answer:

Applicant admits that it owns and operates a regional, tabloid-formatted newspaper under the brand REDEYE that is distributed in print in the Chicagoland area. Applicant admits that it owns federal trademark registrations for REDEYE and REDEYE I (& Design) for “newspapers for general circulation” (Reg. Nos. 2,921,483 and 2,918,012, respectively), which were issued by the PTO on January 25, 2005 and January 11, 2005, respectively (the “Tribune's Registrations”). Applicant admits that the REDEYE newspaper was launched on October 30, 2002. Applicant denies the remaining allegations of Paragraph 7.

8. Notably, despite the fact that Tribune claims in the Application that it used REDEYE on both the Internet and on cable television beginning on October 30, 2002, Tribune did not file use-based applications, or indeed, any applications for the use of REDEYE on those platforms when it sought the initial registrations for the REDEYE newspaper.

Answer:

Applicant admits that it filed the Subject Application, which Application speaks for itself. Applicant further admits that prior to filing the Subject Application, Applicant did not file an application for the Subject Mark for services covered by the Subject Application. Applicant denies the remaining allegations of Paragraph 8.

9. At 2 a.m. E.S.T. on February 6, 2007, FNC launched a late-night television program, “Red Eye w/Greg Gutfeld” (“FNC's Red Eye” or “Red Eye”). FNC's Red Eye, which

is filmed in FNC's studios in New York, presents an irreverent, offbeat, humorous spin on the news. It is intended to be the television equivalent of an online weblog (a "blog"), and is hosted by Greg Gutfeld, a former editor of *Maxim UK* who had achieved renown in the blogosphere as the author of the blog "The Daily Gut" (<http://www.dailygut.com>) and as a conservative contributor to "The Huffington Post" (<http://www.huffingtonpost.com>).

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis denies those allegations.

10. On February 5, 2007, hours before Red Eye was scheduled to air, counsel for Tribune spoke to counsel for FNC and demanded that FNC not air Red Eye, insisting that Tribune owned a trademark for REDEYE and used the trademark on a cable television news program. Tribune informed FNC that it believed that FNC's use of the title "Red Eye" infringed Tribune's trademark. After some investigation, FNC concluded that FNC's Red Eye did not infringe Tribune's Registrations and the program aired, as planned, on February 6.

Answer:

Applicant admits that counsel for Applicant spoke to counsel for FNC to inform FNC of Applicant's ownership of and rights in the trademark REDEYE and that Applicant believed FNC's use of the title "Red Eye" infringed Applicant's trademark(s). Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 10, and on that basis denies those allegations.

11. Two days after the call from Tribune and one day after the first Red Eye aired, on February 7, 2007, Tribune filed the use-based Application for the Subject Mark with the PTO. In its initial Application, which appears to have been filed primarily to gain a litigation advantage in its dispute against FNC, Tribune alleged that it used the Subject Mark:

- in connection with "[p]roviding news, leisure, arts and entertainment information, by means of a global computer network" since October 30, 2002; and
- in connection with "[p]roviding news, leisure, arts and entertainment information, by means of cable television" since January 13, 2006.

Answer:

Applicant admits that it filed the Subject Application on February 7, 2007, which application speaks for itself. Applicant denies the remaining allegations of Paragraph 11.

12. The Application was signed by Mark W. Hianik, the Assistant Secretary of Tribune, and contains the following language:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed true.

Answer:

Applicant admits that the Subject Application, which application speaks for itself, was signed by Mark W. Hianik, Assistant Secretary of Applicant. Applicant denies the remaining allegations of Paragraph 12.

13. On February 14, 2007 - just seven days after filing its application for the Subject Mark - Tribune filed a complaint and motion for a preliminary injunction against FNC in the United States District Court for the Northern District of Illinois, alleging trademark infringement and unfair competition under federal law, and state law dilution based on FNC's Red Eye (the "District Court Action"). Although the complaint in the District Court Action alleges that FNC's Red Eye infringed Tribune's Registrations, it emphasized both that the Subject Mark was used on the Internet and on cable television and that the Application had been filed.

Answer:

Applicant admits that it filed a complaint and motion for a preliminary injunction against FNC in the United States District Court for the Northern District of Illinois, which complaint and motion speak for themselves. Applicant denies the remaining allegations of Paragraph 13.

14. On April 4, 2007, after a three-day evidentiary hearing, Tribune's motion for a preliminary injunction was denied. Judge Elaine E. Bucklo of the United States District Court for the Northern District of Illinois held that Tribune had not shown a likelihood of confusion between FNC's use of RED EYE W/ GREG GUTFELD in connection with its television (and related) services, and Tribune's use of REDEYE.

Answer:

Applicant admits that its motion for a preliminary injunction filed against FNC was denied after a three-day evidentiary hearing via a Memorandum Opinion and Order, which Memorandum Opinion and Order speaks for itself. Applicant denies the remaining allegations of Paragraph 14.

15. On June 15, 2007, FNC and Tribune entered into a stipulation of dismissal of the District Court Action pursuant to a confidential settlement agreement, and the District Court dismissed the action with prejudice on June 18, 2007.

Answer:

Applicant admits the allegations of Paragraph 15.

16. On May 8, 2007, the PTO issued an Office Action regarding Tribune's Application, which stated, "The identification of services is unacceptable because the wording 'news, leisure, arts, and entertainment information' and 'by means of cable television' is indefinite. The applicant must indicate the specific types of news, leisure, art, and entertainment. The applicant must also indicate the nature of the cable services, e.g., production of cable television programs." The PTO proposed possible language that it said the applicant could adopt, if accurate.

Answer:

Applicant admits that the PTO issued an Office Action with respect to the Subject Application, which Office Action speaks for itself. Applicant denies the remaining allegations

of Paragraph 16.

17. On November 8, 2007, Tribune filed its Response to the Office Action (the “Response”), in which it proposed to amend its description of its services to “[p]roviding information on news in the nature of current events reporting, on leisure in the anture [sic] of cultural events, music, theater, sports and restaurants; on fine and performing arts; and on entertainment concerning the motion picture industry, the television industry and sports, by means of a global computer network; production of cable television segments featuring news, leisure, arts and entertainment”. This amendment adopted the PTO's proposed language almost verbatim, but apparently without regard to whether the language was accurate for the Subject Mark. On November 13, 2007, an Examiner's Amendment changed the word “nature” to “nature” to correct the misspelling.

Answer:

Applicant admits that it filed a Response to the Office Action, which Response speaks for itself. Applicant further admits that a subsequent Examiner's Amendment changed the word “anture” to “nature” to correct the misspelling. Applicant denies the remaining allegations of Paragraph 17.

18. In the Response, Tribune lists the first date of use of the Subject Mark or both the Internet *and* cable television as October 30, 2002. This marked a significant shift from the Application, in which Tribune listed the first use of the Subject Mark on cable television as January 13, 2006.

Answer:

Applicant admits that it filed a Response to the Office Action, which Response speaks for itself. Applicant denies the remaining allegations of Paragraph 18.

19. The description of the services and the dates of first use in both the Application and the Response were knowingly false at the time they were made.

Answer:

Applicant denies the allegations of Paragraph 19.

20. As Tribune knows or should have known at the time it filed its Application, it has never used the Subject Mark in commerce on cable television within the meaning of “use in commerce” as defined by the Trademark Act. Instead, Tribune's minimal use of REDEYE on cable television is designed solely to promote the newspaper, and/or is normal and ancillary to the sale of its newspaper.

Answer:

Applicant denies the allegations of Paragraph 20.

21. As a preliminary matter, there is no Tribune sponsored “Red Eye” television program on cable television. And there is no television “segment” called the “RedEye segment” that airs on cable television. No such program or segment is listed in any television guide.

Answer:

Applicant denies the allegations of Paragraph 21.

22. Indeed, contrary to the false allegations in the Application and the Response, Tribune does not and did not “produce” any cable television segments “featuring news, leisure, arts and entertainment” using REDEYE.

Answer:

Applicant denies the allegations of Paragraph 22.

23. Instead, Tribune used REDEYE on cable television to identify one or more reporters from the REDEYE newspaper when they appeared on the CLTV Evening Edition news program.

Answer:

Applicant admits that it used REDEYE on cable television to, among other things, identify one or more reporters from the REDEYE newspaper when they appeared on the REDEYE segment of the CLTV Evening Edition news program. Applicant denies the remaining allegations of Paragraph 23.

24. CLTV is, on information and belief, a local cable news network in the Chicagoland area that is owned and operated by Tribune Company (which is also the parent corporation of the Chicago Tribune Company). As part of its daily programming, CLTV airs the Evening Edition news at 7:30 p.m. C.S.T., 8:30 p.m. C.S.T., and 9:30 p.m. C.S.T. The program is thirty minutes long.

Answer:

Applicant admits that CLTV is a cable news network that is focused on reporting on the Chicagoland area and that is owned and operated by Chicagoland Television News, LLC.

Applicant admits that as part of its programming, CLTV airs an Evening Edition at 7:30 and 8:30 p.m. on Monday through Friday. Applicant denies the remaining allegations of Paragraph 24.

25. Reporters from the REDEYE newspaper occasionally appeared on the CLTV Evening Edition between October 2002 and January 2006 and the REDEYE logo was used to signify their affiliation with the newspaper.

Answer:

Applicant admits reporters from the REDEYE newspaper appeared on the REDEYE segment of CLTV's Evening Edition between October 2002 and January 2006 and the REDEYE logo was used. Applicant denies the remaining allegations of Paragraph 25.

26. Beginning in January 2006, a general assignment reporter for the REDEYE newspaper named Kara Kyles ("Kyles") sometimes appeared on the CLTV Evening Edition for a segment designed to promote the next day's issue of REDEYE.

Answer:

Applicant admits that Ms. Kyles appeared on the REDEYE segment of CLTV's Evening Edition to discuss, among other things, matters relevant to the next day's issue of the REDEYE. Applicant denies the remaining allegations of Paragraph 26.

27. At the end of each segment, either Kyles or the CLTV anchor said words to the effect of, "You can read more about this story in tomorrow's REDEYE" or "You can read more about this story in today's edition of REDEYE".

Answer:

Applicant admits the allegations of Paragraph 27.

28. Upon information and belief, a screen grab of Kyles' appearance on the CLTV Evening Edition was submitted along with the Application as a "specimen" of Tribune's use of REDEYE on cable television.

Answer:

Applicant admits that in support of the Subject Application it submitted a specimen showing use of the Subject Mark, which specimen speaks for itself.

29. Upon information and belief, neither Kyles nor any other REDEYE reporter currently appears on CLTV Evening Edition and Tribune does not currently use REDEYE on cable television in any manner whatsoever.

Answer:

Applicant admits that neither Kyles nor any other REDEYE reporter currently appears on CLTV Evening Edition. Applicant denies the remaining allegations of Paragraph 29.

30. The purpose of the use of REDEYE on cable television was to promote the newspaper. In fact, Jane Hirt, the editor of the REDEYE newspaper, testified under oath that the use of REDEYE on CLTV “just extends our brand to more viewers, which would presumably hopefully get them to pick up the paper and sign in to our website.” Hirt gave this testimony in the District Court Action shortly after the Application was submitted and before the Response.

Answer:

Applicant admits that Jane Hirt testified in the District Court Action, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 30.

31. Accordingly, despite the sworn statements in the Application, Tribune did not and does not use the Subject Mark in commerce within the meaning of “use in commerce” in the Trademark Act, 15 U.S.C. §§ 1051 and 1127.

Answer:

Applicant denies the allegations of Paragraph 31.

32. Instead, Tribune swore to the following material misrepresentations in the Application regarding the purported use of REDEYE on cable television:

- a) Tribune claims that it uses REDEYE in commerce within the meaning of 15 U.S.C. Section 1051(a), as amended, on cable television. In fact, Tribune did not use REDEYE in commerce within the meaning of 15 U.S.C. Section 1051(a), on cable television at the time the Application was filed or at any other time.
- b) Tribune claims in the Application that it “provid[es] news, leisure, arts and entertainment information, by means of cable television.” In fact, Tribune does not separately use REDEYE in commerce on cable television. Tribune's use of REDEYE on cable television is a promotional use incidental and ancillary to the distribution of the newspaper, and not a separate use.
- c) Tribune claims in its Response that it has been using the REDEYE mark in

commerce on cable television “as least as early as October 30, 2002”. In fact, Tribune has never used REDEYE on television as anything other than a promotional use incidental and ancillary to the distribution of the newspaper, and, upon information and belief, it did not use the mark on television at all on October 30, 2002.

- d) Tribune states in its Response that it uses REDEYE for the “production of cable television segments featuring news, leisure, arts and entertainment”. In fact, upon information and belief, Tribune does not produce cable television segments at all.

Answer:

Applicant denies the allegations of Paragraph 32.

33. Tribune knew or should have known that these statements were false. Indeed, Tribune was in a unique position to know the truth of these statements because they published the newspaper and were aware Kyles and any other REDEYE reporters appeared on television only to promote the REDEYE newspaper.

Answer:

Applicant denies the allegations of Paragraph 33.

34. Indeed, the degree of Tribune's knowledge is underscored by the fact that shortly after commencing the District Court Action, only about one month after swearing to the Application, and before filing the Response, Hirt testified that the use of REDEYE on CLTV “just extends our brand to more viewers, which would presumably hopefully get them to pick up the paper.”

Answer:

Applicant admits that Jane Hirt testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 34.

35. Tribune's use of REDEYE on CLTV is merely normal and ancillary to the promotion of the REDEYE newspaper. The use of REDEYE on television is not a separate good or service rendered by Tribune, but, rather, is merely an ancillary or promotional use to the newspaper.

Answer:

Applicant denies the allegations of Paragraph 35.

36. Tribune's knowing and material misrepresentations in the Application and Response conferred a substantial benefit on Tribune because, as discussed below, the filing of

the Application provides Tribune with priority of registration such that the Application bars FNC from obtaining registrations for RED EYE W/ GREG GUTFELD and RED EYE W/ GREG GUTFELD (& Design).

Answer:

Applicant denies the allegations of Paragraph 36.

37. For this reason, as discussed more fully below, Tribune's knowing and material misrepresentations in the Application and Response have damaged FNC. Tribune should not be permitted to obtain a trademark registration in REDEYE in connection with "production of cable television segments" because it does not and has not used its mark in commerce for that purpose. Its contrary representations to the PTO were knowingly false and were designed to induce the PTO to give Tribune a registration to which it is not entitled.

Answer:

Applicant denies the allegations of Paragraph 37.

38. In addition, Tribune made material misrepresentations about the use of REDEYE on the Internet. Specifically, contrary to the statements contained in the Application and the Response, Tribune did not use REDEYE in commerce on the Internet "as least as early as October 30, 2002". Instead, Tribune only minimally used REDEYE on the Internet until July 2006, and any use was solely to promote the REDEYE newspaper.

Answer:

Applicant denies the allegations of Paragraph 38.

39. As Brad Moore, the General Manager of REDEYE testified, although Tribune launched the website www.redeyechicago.com at the same time as the newspaper in October 2002, "the primary purpose of the website at that time was an informational site for the newspaper."

Answer:

Applicant admits that Brad Moore testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 39.

40. According to Moore's further testimony, the website remained unchanged until July 2006.

Answer:

Applicant admits that Brad Moore testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 40.

41. Indeed, Hirt echoed this sentiment, testifying under oath that between October 2002 and July 2006, “it was kind of a business-to-business site that just had information on how to advertise and just a little bit of editorial, and in '06, summer of '06 we redesigned it to add a lot more editorial things for people to read and click on.”

Answer:

Applicant admits that Jane Hirt testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 41.

42. Accordingly, despite the sworn statements in the Application, Tribune did not use the Subject Mark in commerce on the Internet within the meaning of “use in commerce” in the Trademark Act, 15 U.S.C. §§ 1051 and 1127 “at least as early as October 2002”. Instead, it merely used the website to promote the REDEYE newspaper. The use of REDEYE on the website was not a separate good or service provided by Tribune, but is rather merely an ancillary use.

Answer:

Applicant denies the allegations of Paragraph 42.

43. Accordingly, Tribune's sworn statement that used REDEYE in commerce on the Internet “at least as early as October 2002” is a material misrepresentation. The statement was designed to give Tribune an advantage in its litigation with FNC, as well as priority of registration to bar FNC from obtaining registrations for RED EYE W/ GREG GUTFELD and RED EYE W/ GREG GUTFELD (& Design).

Answer:

Applicant denies the allegations of Paragraph 43.

44. Tribune knew or should have known that this statement was false. Indeed, Tribune was in a unique position to know that truth of this statement because they published the newspaper and were aware that REDEYE was only used on the Internet to promote the REDEYE newspaper.

Answer:

Applicant denies the allegations of Paragraph 44.

45. Indeed, the degree of Tribune's knowledge is underscored by the fact that shortly after commencing the District Court Action, only about one month after swearing to the Application, and *before* filing the Response, Moore and Hirt testified that the use of REDEYE on the Internet was designed to promote the REDEYE newspaper and sell advertising therein.

Answer:

Applicant admits that Brad Moore and Jane Hirt testified, which testimony speaks for itself. Applicant denies the remaining allegations of Paragraph 45.

46. Tribune's use of REDEYE on the Internet was merely normal and ancillary to the promotion of the REDEYE newspaper. The use of REDEYE on Internet was not a separate good or service rendered by Tribune, but is rather merely an ancillary use solely to promote the newspaper.

Answer:

Applicant denies the allegations of Paragraph 46.

47. Tribune's knowing and material misrepresentations in the Application and Response conferred a substantial benefit on Tribune because, as discussed below, the filing of the Application provides Tribune with priority of registration such that the Application bars FNC from obtaining registrations for RED EYE W/ GREG GUTFELD and RED EYE W/ GREG GUTFELD (& Design).

Answer:

Applicant denies the allegations of Paragraph 47.

48. For this reason, as discussed more fully below, Tribune's knowing and material misrepresentations in the Application and Response have damaged FNC.

Answer:

Applicant denies the allegations of Paragraph 48.

49. On June 7, 2007, FNC filed applications with the PTO to register its marks, RED EYE W/ GREG GUTFELD and RED EYE W/ GREG GUTFELD (& Design) ("FNC's Applications"), in connection with "entertainment services in the nature of an on-going television news program". The PTO assigned FNC's Applications Serial Nos. 77/200,629 and 77/200,700, respectively.

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49, and on that basis denies those allegations.

50. In response to FNC's Applications, the PTO issued an Office Action for each on September 14, 2007, citing an initial refusal to register based on a likelihood of confusion with Tribune's Registrations for REDEYE and REDEYE I (& Design) for newspapers. The PTO also cited the Application, as well as to Tribune's other co-pending application for REDEYE, as

potentially conflicting prior applications.

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50, and on that basis denies those allegations.

51. On March 4, 2008, FNC filed its Responses to Office Action for FNC's Applications for RED EYE W/ GREG GUTFELD and RED EYE W/ GREG GUTFELD (& Design).

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51, and on that basis denies those allegations.

52. On April 8, 2008, the PTO issued Notices of Suspension with respect to FNC's Applications. In addition to refusing to register FNC's marks based on a perceived likelihood of confusion with Tribune's Registrations for the marks REDEYE and REDEYE I (& Design) in connection with newspapers, the PTO stated, "Action on this application is suspended pending the disposition of: Application Serial No(s). 77101529 and 77101706." Thus, FNC's application has been suspended pending disposition of Tribune's Applications.

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52, and on that basis denies those allegations.

53. FNC's television program remains on the air to this day.

Answer:

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53, and on that basis denies those allegations.

54. FNC actually uses its mark in connection with cable television services and should not be prevented from registering its mark based on Tribune's fraudulent Application.

Answer:

Applicant denies that its Application is fraudulent. Applicant further denies that FNC should not be prevented from registering its mark. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 54, and on that basis denies those allegations.

55. FNC cannot obtain registrations for its own lawful use of its mark while Tribune's Application is pending. On information and belief, if the registration for Tribune's fraudulent Application issues, FNC's mark will be denied registration by the PTO.

Answer:

Applicant denies that its Application is fraudulent. Applicant further denies that it is in any way improper for FNC's application to be denied registration by the PTO. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55, and on that basis denies those allegations.

To the extent responsive pleading is required, Applicant denies all allegations in the section headings and the request for relief in the concluding Paragraph of the Amended Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses:

1. Opposer is not entitled to the relief it seeks because the Amended Notice of Opposition fails to state a claim upon which relief can be granted.
2. Opposer is not entitled to the relief it seeks because Applicant's statements made during the prosecution of the Subject Application were not false.
3. Opposer is not entitled to the relief it seeks because any allegedly false statements made by the Applicant during the prosecution of the Subject Application were not material.

4. Opposer is not entitled to the relief it seeks because Applicant has acted in good faith at all times with respect to the allegations contained in the Amended Notice of Opposition, and its conduct has never been willful, in bad faith, or with the intent to deceive.
5. Opposer is not entitled to the relief it seeks because its claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches and/or acquiescence.
6. Opposer is not entitled to the relief it seeks because its claims are barred, in whole or in part, by the doctrine of unclean hands.
7. Opposer is not entitled to the relief it seeks because Applicant's rights in the Subject Mark are prior and superior to Opposer's rights in the same or similar mark.

WHEREFORE, Applicant respectfully requests that this opposition be dismissed with prejudice.

Respectfully submitted,

CHICAGO TRIBUNE COMPANY, LLC

Date: July 29, 2013

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing ANSWER TO AMENDED NOTICE OF OPPOSITION is being served on the following counsel via electronic mail on this 29th day of July, 2013 addressed as follows:

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