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

Proceeding	91184674
Party	Defendant Premier Commercial Bank, N.A.
Correspondence Address	ERIC J. GOODMAN BURKHALTER KESSLER GOODMAN & GEORGE LLP 2020 MAIN ST STE 600 IRVINE, CA 92614-8226 UNITED STATES
Submission	Answer
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Date	07/25/2008
Attachments	Answer to Notice of Opposition.pdf (6 pages)(1240129 bytes)

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

In the Matter of Application
Serial No. 77/273,108

Opposition No.: 91184674

PREMIER COMMERCIAL BANK
F/K.A., PREMIER COMMERCIAL
BANK [PROPOSED]

Opposer,

v.

PREMIER COMMERCIAL BANK N.A.,

Applicant.

ANSWER TO NOTICE OF OPPOSITION

Applicant PREMIER COMMERCIAL BANK N.A. ("Applicant"), by and through its attorneys, Burkhalter Kessler Goodman & George LLP, hereby answers the Notice of Opposition ("Notice") filed by Opposer PREMIER COMMERCIAL BANK F/K.A., PREMIER COMMERCIAL BANK [PROPOSED] ("Opposer"), as follows, addressing the numbered grounds for opposition *seriatim*:

1. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph one of the Notice and, upon that basis, denies the allegations therein.
2. Applicant admits the allegations contained in paragraph two of the Notice.
3. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph three of the Notice and, upon that basis, denies the allegations therein.

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ANSWER TO NOTICE OF OPPOSITION

4. Applicant denies the allegations contained in sentences one and two of paragraph four of the Notice. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained sentence three of paragraph four of the Notice and, upon that basis, denies the allegations therein.

5. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph five of the Notice and, upon that basis, denies the allegations therein.

6. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph six of the Notice and, upon that basis, denies the allegations therein.

7. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph seven of the Notice and, upon that basis, denies the allegations therein.

8. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph eight of the Notice and, upon that basis, denies the allegations therein.

9. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph nine of the Notice and, upon that basis, denies the allegations therein.

10. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph ten of the Notice and, upon that basis, denies the allegations therein.

11. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph eleven of the Notice and, upon that basis, denies the allegations therein.

12. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph twelve of the Notice and, upon that basis, denies the allegations therein.

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13. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph thirteen of the Notice that "Opposer thus adopted the use of the phrase 'Premier Commercial Bank' as a tradename and trademark," and, upon that basis, denies the allegations therein. Applicant denies the allegations contained in paragraph thirteen of the Notice that "the public identified and distinguished Opposer's services as being symbolized by the phrase, all before September 6, 2007..."

14. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph fourteen of the Notice and, upon that basis, denies the allegations therein.

15. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph fifteen of the Notice and, upon that basis, denies the allegations therein.

16. Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph sixteen of the Notice and, upon that basis, denies the allegations therein.

17. Applicant admits that it has two physical locations, both located in Orange County, California and that it maintains the website *www.pcboe.com*. Otherwise, as to all other allegations, Applicant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph sixteen of the Notice and, upon that basis, denies the allegations therein.

18. Applicant denies the allegations contained in paragraph eighteen of the Notice.

19. Applicant denies the allegations contained in paragraph nineteen of the Notice.

20. Applicant denies the allegations contained in paragraph twenty of the Notice.

21. Applicant denies the allegations contained in paragraph twenty-one of the Notice.

22. Applicant admits the allegations contained in paragraph twenty-two of the Notice.

23. Applicant admits the allegations contained in paragraph twenty-three of the Notice.

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24. Applicant admits that “[i]f Applicant’s and Opposer’s respective banking services were offered within the same geographic markets and if the phrase ‘Premier Commercial Bank’ is determined to be protectable as a mark...then the parties’ relevant consumers and the public would likely be confused by the competing uses of the same mark with the same or similar banking services.” Applicant denies that such confusion is conditional upon the protectability of Opposer’s mark.

25. Applicant denies the allegations contained in paragraph twenty-five of the Notice.

26. Applicant denies the allegations contained in paragraph twenty-six of the Notice.

AFFIRMATIVE DEFENSES

Failure to State Grounds for Opposition

1. Applicant is informed and believes, and thereon alleges, that the facts set forth in the Notice are insufficient to justify denial of its application.

No Priority or Likelihood of Confusion

2. Opposer does not have rights in or to a mark which is likely to be confused with the Applicant’s mark, and specifically as an alternative defense to a claim of seniority, nor is there any likelihood of confusion, mistake, or deception because Applicant’s mark and the pleaded mark of Opposer are not confusingly similar.

Estoppel, Waiver, Acquiescence and Laches

3. Opposer is estopped from asserting any exclusive rights to a trademark for PREMIER COMMERCIAL BANK and Opposer’s claims against Applicant are barred under the doctrines of waiver, acquiescence, and laches.

No Exclusive Right

4. Opposer does not have any exclusive right to the use of the phrase PREMIER COMMERCIAL BANK alone or in combination with any other letters, terms, or words to form a trademark.

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Unclean Hands

5. Opposer has engaged in acts constituting unclean hands in filing this application and in the conduct of this opposition proceeding and should therefore be precluded from asserting any rights against Applicant.

Lack of Distinctiveness

6. Applicant is informed and believes, and thereupon alleges, that there is no likelihood of confusion, mistake or deception because Applicant is informed and believes that the mark on which Opposer asserts rights is not distinctive or has not acquired distinctiveness, nor do purchasers associate the mark with Opposer alone.

Failure to Function as a Trademark

7. Applicant is informed and believes, and thereupon alleges, that there is no likelihood of confusion, mistake, or deception because Applicant is informed and believes that the word PREMIER COMMERCIAL BANK, as used by Opposer, does not function as a trademark such that purchasers of goods do not exclusively identify Opposer with the mark.

THEREFORE, Applicant requests that this Notice and opposition proceeding be dismissed with prejudice and Applicant's application be allowed to mature to registration. Service has been made on Opposer's counsel as shown in the attached certificate of service.

Dated: July 25, 2008

BURKHALTER KESSLER
GOODMAN & GEORGE LLP



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PREMIER COMMERCIAL BANK N.A.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2020 Main Street, Suite 600, Irvine, California 92614.

On July 25, 2008, I caused the foregoing document described as ANSWER TO NOTICE OF OPPOSITION to be served on the interested parties in this action by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

David W. Sar
BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.C.
Post Office Box 26000
Greensboro, NC 27420-6000

BY MAIL

I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE

I delivered such envelope by hand to the offices of the addressee.

I caused such envelope to be delivered to a commercial messenger service with instructions to personally deliver same to the offices of the addressee on this date.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 25, 2008, at Irvine, California.



ELAINE CLARK