

ESTTA Tracking number: **ESTTA234117**

Filing date: **09/02/2008**

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

Proceeding	91185323
Party	Defendant FHI Heat, Inc.
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Date	09/02/2008
Attachments	Answer.pdf ( 7 pages )(33534 bytes )

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

**In the Matter Of:**

Trademark Application Serial No. 77/369,976  
For The Mark FHI  
Published in the Official Gazette on May 20, 2008

Farouk Systems, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91185323
	)	
FHI Heat, Inc.	)	
	)	
Applicant	)	

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, FHI Heat, Inc., submits this answer to the Notice of Opposition filed by Opposers Farouk Systems, Inc., against the application for registration of FHI Heat, Inc.'s trademark, FHI, Serial No. 77/369,976, published in the Official Gazette of May 20, 2008. Applicant pleads and avers as follows as follows, wherein paragraph numbers correspond to paragraph numbers in the Notice of Opposition:

1. Applicant admits that Farouk Systems Inc. is organized and exists under the laws of the state of Texas, and has a principal place of business at 250 Pennbright, Suite 150, Houston, TX 77090. Applicant lacks information or knowledge

sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of the Notice of Opposition, and accordingly denies the same.

2. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Notice of Opposition, and accordingly denies the same.
3. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Notice of Opposition, and accordingly denies the same.
4. Applicant admits that U.S. Registration Nos. 3,4426,769, 2,660,257, 3,107,769, 3,054,490 for the mark CHI, 3,387,588 for the mark CHI NANO and 3,341,114 and 3,331,008 for the mark ULTRA CHI, appear to be owned by Opposer, according to the records of the United States Patent and Trademark Office. Applicant lacks information or knowledge sufficient to form a belief as to the actual ownership of these marks as alleged in paragraph 4 of the Notice of Opposition, and accordingly denies the same. Applicant admits that these registrations cover goods in International Classes 3, 9, 11, and 16.
5. Applicant admits that U.S. Registration Application Serial Nos. 76/512,597, 78/782,679, 78/795,135 and 77/457,984 for the mark CHI, appear to be owned by Opposer, according to the records of the United States Patent and Trademark Office. Applicant lacks information or knowledge sufficient to form a belief as to the actual ownership of these applications as alleged in paragraph 5 of the Notice of Opposition, and accordingly denies the same. Applicant admits that these applications cover goods in International Classes 3, 8, and 11.

6. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Notice of Opposition, and accordingly denies the same.
7. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Notice of Opposition, and accordingly denies the same.
8. Applicant admits the allegations in paragraph 8, with the clarification that the street address of its principal place of business is 14500 Industrial Avenue North, Suite B, Maple Heights, Ohio 44137 rather than 14,500 Industrial Avenue North, Suite B, Maple Heights, Ohio 44137.
9. Admit.
10. Admit.
11. Applicant lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Notice of Opposition, and accordingly denies the same.
12. Deny. There is no likelihood of confusion, mistake, or deception between Applicant's FHI mark and Opposer's CHI mark or related marks.
13. Applicant admits that at least some of the types of goods sold by FHI Heat, Inc. under the FHI mark are of the same type as those sold by Opposer under the CHI mark. However, Applicant denies that all the goods sold under the FHI mark are virtually identical to those sold under the CHI mark.

14. Applicant admits that it was aware of Opposer and Opposer's CHI mark before the filing of the Opposed Application. Applicant denies the remaining allegations of paragraph 14.
15. Deny.
16. Deny.
17. Admit.

#### Affirmative Defenses

18. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant's FHI mark is not similar in sight, sound or meaning to Opposer's CHI.
19. Applicant's actual use of a stylized typeface in connection with its FHI mark, while potentially relevant in an infringement action, is irrelevant to the registration of the standard character mark FHI. In any event, the letter "F" in "FHI" clearly can not be confused with the letter "C" regardless of stylization and the mark FHI provides a distinct commercial impression from the mark CHI.
20. In use, Applicant's FHI mark is spoken as the series of initials, "F," "H" and "I." Opposers CHI mark is typically pronounced as "chee." There are no possible pronunciations of these marks that would be likely to cause confusion, mistake, or deception in the minds of consumers.
21. No possible meanings for the marks "FHI" and "CHI" that would be likely to give rise to confusion, mistake, or deception in the minds of consumers are known to Applicant.

22. The mark FHI has achieved secondary meaning in relation to Applicant's goods and services, through exclusive and continuous use with related goods and/or services since at least September 30, 2003.
23. Opposer, Farouk Systems Inc.'s, opposition to the registration of FHI is an attempt to impermissibly expand the scope of its CHI mark.
24. Based on the allegations of paragraphs 18-23 above, Opposers have failed to state a claim for which relief can be granted. (F.R.C.P. 12(b)(6)).

Wherefore Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown that it will be or is likely to be, damaged by the registration of the Applicant's trademark; and that Applicant's trademark is manifestly distinct from any alleged mark or marks of the Opposer. Accordingly, Applicant respectfully requests that the Notice of Opposition be dismissed and that a registration issue to Applicant for its mark. This Answer is timely filed under 37 C.F.R. § 1.7, on or before September 2, 2008, as the next succeeding business day following a last day for taking an action that falls on a Saturday, a Sunday or a Federal holiday.

Respectfully submitted,

/John J. Cunniff/

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CERTIFICATE OF SERVICE

A true copy of the foregoing Answer To Notice Of Opposition was served by mailing the same, First Class Mail, postage prepaid to Opposer's attorney:

Ben D. Tobor, Esq.  
GREENBERG TRAURIG LLP  
1000 Louisianan Street, Suite 1700  
Houston, Texas, 77002

this second day of September, 2008.

/John J. Cunniff/

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FHI Heat, Inc.