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

Proceeding	91186653
Party	Defendant Harvey Ball Smile Limited
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Attachments	HB Loufrani answer nov 6 08.pdf (4 pages)(100616 bytes) HB Loufrani answer exhibit.pdf (1 page)(455022 bytes)

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

FRANKLIN LOUFRANI

Opposer,

Opposition No. 91186653

v.

HARVEY BALL SMILE LIMITED

Applicant.

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION AND
AFFIRMATIVE DEFENSES**

COMES NOW Harvey Ball Smile Limited (“Applicant”), by and through counsel, and responds to the Notice of Opposition filed by Franklin Loufrani (“Opposer”) as follows, by responding to each enumerated paragraph of the said Notice of Opposition. Any allegation in the Notice of Opposition not specifically admitted herein is denied.

Regarding the allegations in the first unnumbered paragraph, Applicant admits that it submitted a trademark application 77/347,604 (“Applicant’s Mark”), which application speaks for itself. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the representations in the paragraph regarding Opposer’s citizenship and place of business, and on that basis denies the same. Applicant denies the remaining allegations contained in the paragraph.

1. Applicant admits the allegations contained in Paragraph 1.
2. Applicant denies the allegations in paragraph 2 except that it admits that Exhibit A appears to be true and correct copy of the “TARR” record of Applicant’s Mark, and admit that it seeks to register Applicant’s Mark in the Official gazette on May 27, 2008 for:
“Coats; Sweaters; Pants; Shirts; Trousers; Skirts; T-shirts; Pajamas; Swimsuits; Underwear; Socks and stockings; Scarves; Neckties; Gloves; Footwear; Hats; and Caps.”

3. Applicant admits the allegation contained in Paragraph 3.
4. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained Paragraph 4.
5. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained Paragraph 5.
6. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained Paragraph 6 .
7. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained Paragraph 7,.
8. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained Paragraph 8.
9. Applicant admits the allegations contained in Paragraph 9.
10. Applicant admits the allegations contained in Paragraph 10.
11. Applicant admits the allegations contained in Paragraph 11.
12. Applicant denies the allegations in Paragraph 12 except to the extent that the serial numbers on the applications cited therein speak for themselves.
13. Applicant lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations contained in Paragraph 13.
14. Applicant denies the allegations contained in Paragraph 14 except to the extent that Exhibit Q speaks for itself.
15. Applicant denies the allegations contained in Paragraph 15.
16. Applicant denies the allegations contained in Paragraph 16.
17. Applicant denies the allegations contained in Paragraph 17. Furthermore, Applicant alleges that Applicant's Happy Face Design Element in Serial No. 77/347,604 (the "Design") is a famous trademark, and is associated with Applicant, as Applicant's predecessor in interest, namely, Mr. Harvey Ball, is widely credited as creator of the Design . For example, as the attached exhibit shows, on October 1, 1999, the United States Postal Service unveiled the commemorative stamp which used the Happy Face as a symbol of the seventies. Moreover, the United Postal Service officially recognized that Mr. Ball as the creator of Design and celebrated the first World Smile Day.
18. Applicant denies the allegations contained in Paragraph 18.
19. Applicant denies the allegations contained in Paragraph 19.
20. Applicant denies the allegations contained in Paragraph 20.
21. Applicant denies the allegations contained in Paragraph 21.
22. Applicant denies the allegations contained in Paragraph 22.
23. Applicant lacks sufficient knowledge and information upon which to from a belief as to the truth of the allegations contained in Paragraph 23.

24. Applicant denies the allegations contained in Paragraph 24.

As to the concluding paragraph of the Opposition, to the extent that a response is required, applicant denies that Mr. Loufrani is entitled to the relief he seeks.

WHEREFORE, Applicant respectfully prays that Judgment be entered for Applicant and against Opposer in this proceeding, that the Notice of Opposition be dismissed, and that Applicant's opposed application be allowed to proceed to registration on the Principal Register.

Applicant will assert any affirmative defense that may be developed throughout discovery and testimony periods in this proceeding.

AFFIRMATIVE DEFENSES

1. Opposer is barred from the relief sought by the doctrine of laches.
2. Opposer is barred from the relief sought by the doctrine of acquiescence.
3. Opposer is barred from the relief sought by the doctrine of estoppel.
4. Opposer is barred from the relief sought by the doctrine of unclean hands.
5. Further investigation and discovery may reveal that Opposer fails to state a claim upon which relief may be granted.
6. Further investigation and discovery may reveal that Opposer lacks standing upon which to oppose registration of applicant's Mark.
7. Mr. Loufrani has abandoned any rights he may have held in his alleged marks through non-use.

Respectfully submitted

HARVEY BALL SMILE LIMITED

Date: November 6, 2008

/mschwimmer/

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I caused a copy of the foregoing *Answer to Notice of Opposition and Affirmative Defense* to be served on:

Steven L. Baron
Natalie A. Harris
Attorneys of Record for Mr. Franklin Loufrani
Mandell Menkes LLC
333 West Wacker Drive, Suite 300
Chicago, IL 60606

via e-mail and First Class Mail, by causing a copy to be placed in a sealed, postage pre-paid envelope, properly addressed as above, and causing said envelope to be deposited at 7 Bayberry Drive. Mt. Pleasant NY, this 6th day of November, 2008.

/mschwimmer/

1 OCTOBER 1999

THE FIRST WORLD SMILE DAY HELD ON LARGE SCALE NEVER BEFORE HAS A SMILE BEEN AS NEEDED

On 1 October 1999, the United States Postal Service unveiled the commemorative stamp which used SMILEY FACE as a symbol of the Seventies. The representative of the United States Postal Service officially recognized that Harvey Ball was the creator of SMILEY FACE, and thanked him. As a result of this, he has become a well-known American.



Prefectural Governor, Mayor Mariano, Representatives of State Assembly and the United States Postal Service, and many others, such as the President of the local Fleet Bank, attended.



At a site in Worcester city, the birthplace of SMILEY FACE, the commemorative stamp was unveiled for the first time in the whole of America.



Local schoolchildren attended and sang beautifully.



SMILEY FACE was chosen as a USA commemorative stamp, and introduced as the design and creation of Harvey Ball.