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

Proceeding	91190169
Party	Defendant Susino USA, LLC
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Submission	Answer
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Date	06/05/2009
Attachments	Susino Answer.pdf (5 pages)(22813 bytes)

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

In The Matter of App. Ser. No. 77/355,544)	
)	
SUSINO UMBRELLA CO., LTD.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91190169
)	
SUSINO USA, LLC)	
)	
Applicant,)	

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMITIVE DEFENSES

Applicant Susino USA, LTD hereby submits its Answer to the Notice of Opposition filed by Susino Umbrella Co, LTD as follows:

- 1) Applicant admits the allegation in Paragraph 1.
- 2) Applicant admits the allegation in Paragraph 2.
- 3) Applicant is without knowledge or information sufficient to form a belief as to paragraph 3 and therefore denies the allegation same.
- 4) Applicant is without knowledge or information sufficient to form a belief as to paragraph 4 and therefore denies the allegation same.
- 5) Applicant is without knowledge or information sufficient to form a belief as to paragraph 5 and therefore denies the allegation same.

6) Applicant is without knowledge or information sufficient to form a belief as to paragraph 6 and therefore denies the allegation same.

7) Applicant is without knowledge or information sufficient to form a belief as to paragraph 7 and therefore denies the allegation same.

8) Applicant is without knowledge or information sufficient to form a belief as to paragraph 8 and therefore denies the allegation same.

9) Applicant is without knowledge or information sufficient to form a belief as to paragraph 9 and therefore denies the allegation same.

10) Applicant is without knowledge or information sufficient to form a belief as to paragraph 10 and therefore denies the allegation same.

As and for Affirmative Defenses, Applicant states as follows:

APPLICANT'S AFFIRMATIVE DEFENSES

In prosecuting its application to register SUSINO, Susino Umbrella in paragraph 3, alleges to have had filed Application Serial No. 79/001855 under 66A, Susino plus design and Characters and in Paragraph 5 Susino Umbrella alleges a pending application and fails to mention this application was abandoned by Notice of Abandonment on April 15, 2005 most notably under a different company name other than the Susino Umbrella and it being mistranslated, but rather a Jianjiang Hengshun Gingham Company, Ltd. (JHG).

In essence Susino Umbrella is claiming on behalf of JHG the mark is identical in Serial No. 79/001855, however Susino Umbrella does not disclose or mention the examining attorney issued an office action on October 12, 2004

instructing the then applicant, JHG not Susino Umbrella, to submit a new drawing showing the entire mark clearly and conforming to 37 C.F.R. §§2.52 and stating the current drawing is not acceptable because the depiction of the mark is unclear; the drawing is a photocopy of the mark that will not reproduce satisfactorily and failed to respond to the examining attorney.

Additionally the examining attorney in No. 79/001855 determined the applicant, JHG, must indicate whether “SUSINO” has any significance in the relevant trade, any geographical significance, or any meaning in a foreign language. 37 C.F.R. §2.61(b) and it again neglected to respond to the examining attorney thus resulting in notice of abandonment in which the mark was eventually abandoned.

In paragraph 7, Susino Umbrella alleges it is entitled to protection of the Goodwill in its trademark against confusingly similar marks, yet Susino again fails to mention in October 12, 2004 the examining attorney rejected and refused to register that mark under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant’s mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 1294244 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* and JHG neglected to respond again to the examining attorney and knowingly taking no action and abandoned the application the Opposer is relying on in its opposition.

Susino Umbrella relies on the now abandoned application by another applicant, JHG , whereas the Commissioner of Trademarks issued a Notification of Confirmation of Provisional Refusal to the IB, office reference 79001855, in

accordance with rule 17(5)(a)(i) of the Common Regulations stating in part “The United States Patent and Trademark Office hereby notifies the International Bureau of the REFUSAL TO GRANT PROTECTION in the United States” diminishing, if any, common law rights of protection as claimed by Susino Umbrella in Paragraph 5.

Susino Umbrella having had the knowledge of the abandonment of JHG’s application and the Commissioner’s prior refusal to grant protection never once attempted to revive the application on behalf of JHG and is only coming forth in opposition of Susino USA’s application.

Therefore the Applicant puts for the affirmative defenses including but not limited to the doctrine of laches, abandonment, unclean hands, acquiescence, and estoppel prevailing in favor of the applicant.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be rejected and the Applicant’s mark be allowed to proceed to registration.

Respectfully Submitted:

By: /s/ /Todd Nadrich/

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Certificate of Service

I hereby certified that the above and forgoing Answer to Notice of Opposition with Affirmative Defenses was served upon Opposers by depositing a copy of same in the United States Mail, first class postage prepaid, on this 5 day of June, 2009, addressed to:

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Attorney for Opposers

/s/ /Todd Nadrich/

Todd Nadrich