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Filing date: **10/23/2009**

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

Proceeding	91191912
Party	Defendant Imagini Holdings Limited
Correspondence Address	Susan Fentress Eagle IP Limited 22/F Kwai Hung Holdings Centre , 89 King's Road North Point, HONG KONG eip@eip.hk
Submission	Answer and Counterclaim
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Signature	/ChelseaaBush/
Date	10/23/2009
Attachments	answer.pdf (6 pages)(131812 bytes)

Registration Subject to the filing

Registration No	3245349	Registration date	05/22/2007
Registrant	DATING DNA, LLC 13804 TORREY DEL MAR DR SAN DIEGO, CA 92130 UNITED STATES		

Goods/Services Subject to the filing

Class 045. First Use: 2006/09/26 First Use In Commerce: 2006/09/26
All goods and services in the class are requested, namely: Dating and Matchmaking services

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

In the Matter of Application No. 77/715869

Dating DNA, LLC, Opposer, v. Imagini Holdings Ltd., Applicant.	ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIMS FOR CANCELLATION Opposition No. 91191912
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Applicant Imagini Holdings Ltd. (“Applicant”), owner of United States Trademark Application Serial Number 77/715869, hereby answers the Notice of Opposition (“Opposition”) filed by Opposer Dating DNA, LLC (“Opposer”). Applicant lacks sufficient information on which to form a belief as to the truth of Opposer’s allegation in the unnumbered introductory paragraph of the Opposition that Opposer believes it will be damaged by the registration of the above-identified mark and on that basis denies that allegation. With respect to the individually numbered paragraphs of the Opposition, Applicant answers as follows:

1. Applicant admits the allegations in Paragraph 1.
2. Applicant admits the allegations in Paragraph 2.
3. Applicant admits the allegations in Paragraph 3.
4. Applicant admits the allegations in Paragraph 4.
5. Applicant admits the allegations in Paragraph 5.
6. Applicant admits the allegations in Paragraph 6.

7. Applicant admits the allegations in Paragraph 7.

8. Applicant admits that Opposer is listed as the “last owner of record” for Registration No. 3496500 for the mark DATING DNA for “[c]omputer dating services; Dating services; Internet based social networking, introduction, and dating services; Marriage partner introduction or dating services; On-line identity reliability investigation in the field of on-line dating and claims made about age, gender; Reminder services in the area of upcoming important dates and events; Video dating services; Web site services featuring on-line dating club” on the TARR system at the United States Patent and Trademark Office. Except as expressly admitted, Applicant denies the allegations of Paragraph 8.

9. Applicant admits that Opposer is listed as the “last owner of record” for Registration No. 3245349 for the mark DATING BY DNA for “dating and matchmaking services” on the TARR system at the United States Patent and Trademark Office. Applicant alleges, however, that Opposer is not the proper owner of and does not have valid rights in Registration No. 3245349 as it was improperly assigned to Opposer when it was still an intent-to-use application. Except as expressly admitted, Applicant denies the allegations of Paragraph 9.

10. Upon information and belief, Applicant denies the allegation that Opposer and its predecessor in interest have continuously used the DATING BY DNA mark in interstate commerce since at least as early as September 26, 2006. Applicant lacks sufficient information on which to form a belief as to the truth of the remaining allegations

in Paragraph 10 and on that basis denies them.

11. Upon information and belief, Applicant denies that (1) Opposer has invested a great deal of money and effort in promoting its services under the DATING BY DNA mark and is continuing to invest significant resources in like promotion; (2) that services sold by Opposer in association with the DATING BY DNA mark have been widely promoted and sold throughout the country; (3) that by the extensive use of the DATING BY DNA mark, and by the promotional efforts in connection therewith, Opposer has built up valuable goodwill in its DATING BY DNA mark; and (4) that because of such use and promotion, DATING BY DNA has acquired secondary meaning in the minds of the public in connection with Opposer and its services. Applicant lacks sufficient information on which to form a belief as to the truth of the remaining allegations in Paragraph 11 and on that basis denies them.

12. Applicant denies the allegations in Paragraph 12.

13. Applicant denies the allegations in Paragraph 13.

AFFIRMATIVE DEFENSES

1. Opposer's request for relief is barred in so far as Opposer relies on Registration Number 3245349 for DATING BY DNA since, upon information and belief, the underlying intent-to-use application for the mark was improperly assigned and the resulting registration is void.

2. Opposer's request for relief is barred in so far as Opposer relies on Registration Number 3245349 for DATING BY DNA on the grounds that, upon

information and belief, Opposer has abandoned use of the DATING BY DNA trademark.

3. Opposer's request for relief is barred in so far as Opposer relies on Registration Number 3245349 for DATING BY DNA on the grounds that Opposer does not have valid rights in and is not the proper owner of said registration.

4. Opposer's request for relief is barred because Opposer fails to state a claim upon which relief can be granted.

5. Opposer's request for relief is barred by the doctrine of unclean hands and bad faith.

COUNTERCLAIMS FOR CANCELLATION

1. Applicant hereby presents counterclaims for cancellation of Registration No. 3245349 for DATING BY DNA registered to Dating DNA, LLC.

2. Upon information and belief, Opposer Dating DNA, LLC is a limited liability company with an address at 13804 Torrey Del Mar Drive, San Diego, California 92130.

3. Opposer is the listed registrant for Registration Number 3245349 for DATING BY DNA for "dating and matchmaking services."

FIRST COUNTERCLAIM

4. Upon information and belief, the underlying application (Serial No. 78432066) that resulted in the subject DATING BY DNA registration was improperly assigned on August 20, 2006 when it was an intent to use application. Upon information and belief, the purported assignee was neither a successor to the then listed applicant nor to the portion of the business to which the mark pertained. Therefore, the registration is void

and should be cancelled.

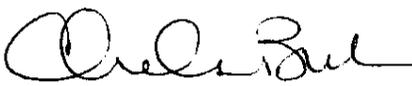
SECOND COUNTERCLAIM

5. Upon information and belief, Opposer has replaced its DATING BY DNA mark with DATING DNA. Opposer has therefore abandoned DATING BY DNA with no intent to resume use. Accordingly, the registration for DATING BY DNA should be cancelled.

WHEREFORE, Applicant respectfully requests that (1) the subject opposition against its application for VISUALDNA SHOPS be dismissed with prejudice, and (2) Opposer's counterclaims for cancellation be sustained and Opposer's DATING BY DNA registration be canceled.

Dated: October 23, 2009

ORRICK HERRINGTON & SUTCLIFFE LLP

By: 

Beth M. Goldman
Chelsea E.L. Bush

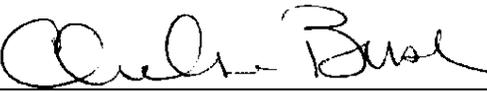
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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIMS FOR CANCELLATION upon Opposer by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on October 23, 2009, addressed as follows:

Diane L. Gardner
Lexevia, PC
4139 Via Marina PH3
Marina Del Rey, CA 90292

Dated: October 23, 2009



Chelsea E.L. Bush