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

Proceeding	91192093
Party	Defendant Zero Motorcycles, Inc.
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Submission	Answer
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Date	11/09/2009
Attachments	ZERO - ANSWER to Pirelli US Oppositions.pdf (6 pages)(29890 bytes)

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

_____ PIRELLI TYRE S.P.A.,)	
)	
	)	Consolidated Opposition No.
Opposer,	)	91192093
)	
v.	)	Mark: ZERO X
	)	Serial No. 771616233
	)	Filed: November 17, 2008
ZERO MOTORCYCLES, INC.,	)	Published: June 2, 2009
)	
Applicant.	)	Mark: ZERO SS
	)	Serial No. 771665628
	)	Filed: February 6, 2009
	)	Published: June 2, 2009
)	
	)	Mark: ZERO S
	)	Serial No. 771665629
	)	Filed: February 6, 2009
	)	Published: June 2, 2009
_____)	

APPLICANT'S ANSWER TO OPPOSITION

Applicant, Zero Motorcycles, Inc., by its attorney, hereby answers the allegations set forth in the Notice of Opposition as follows:

1. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies said allegations.

2. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and, therefore, denies said allegation.

3. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and, therefore, denies said allegation.

4. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and, therefore, denies said allegation.

5. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and, therefore, denies said allegation.

6. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and, therefore, denies said allegation.

7. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and, therefore, denies said allegation.

8. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and, therefore, denies said allegation.

9. Applicant admits the allegations set forth in Paragraph 9 of the Notice of Opposition.

10. Applicant admits the allegations set forth in Paragraph 10 of the Notice of Opposition.

11. Applicant admits the allegations set forth in Paragraph 11 of the Notice of Opposition.

12. Applicant admits the allegations set forth in Paragraph 12 of the Notice of Opposition.

13. Applicant admits the allegations set forth in Paragraph 13 of the Notice of Opposition.

14. Applicant admits the allegations set forth in Paragraph 14 of the Notice of Opposition.

15. Applicant repeats all of its answers to Paragraphs 1 through 14.

16. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 16 of the Notice of Opposition and, therefore, denies said allegations.

17. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 17 of the Notice of Opposition and, therefore, denies said allegations.

18. Applicant denies the allegations set forth in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations set forth in Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegation set forth in Paragraph 20 of the Notice of Opposition, and denies that its registration and use of its ZERO X, ZERO SS, and ZERO S has caused or would cause any cognizable damage to Opposer.

Applicant further denies any and all additional allegations made within the Notice of Opposition.

WHEREFORE, Applicant prays that the Opposition be dismissed.

AFFIRMATIVE DEFENSES

1. Opposer has abandoned rights in its ZERO mark, and/or other of its ZERO-formative marks, via non-use of the mark with the intent not to continue use, and/or via acts which have caused such mark(s) to lose significance as indicia of origin.
2. Opposer and/or its predecessors in interest have acquiesced to Applicant's registration and use of a substantially similar mark or marks, for substantially related goods as those that are subject of the applications now opposed by Opposer.
3. The doctrine of laches bars Opposer's opposition of these applications.
4. Opposer's mark is functional and thus not capable of trademark protection with respect to Petitioner's goods, insofar as the shape of Opposer's tires, wheels inner tubes and rims must be round, like the number zero.
5. Opposer's ZERO mark is not distinctive, and has not achieved secondary meaning. Thus it is incapable of registration on the Principal Register.
6. Applicant has priority of use over Opposer in the competitive market at issue, namely the market for electric motorcycles.
7. There is no likelihood of confusion because the goods of the parties are noncompetitive and unrelated.
8. Applicant has made a fair use of Opposer's mark.
9. Opposer and/or its predecessors in interest have made the application and/or acquired or maintained the registrations cited in the Notices of Opposition, or any of them, by providing false or misleading information to the US Patent and Trademark

Office, thereby committing fraud on the Trademark Office as further set out in
Applicant's Answer to Petition for Cancellation & Counterclaim for Cancellation of
Registration No. 2749340, filed today in action no. 92051520.

Dated: November 6, 2009

ZERO MOTORCYCLE, INC.

By: /s/ *Mike Rodenbaugh*

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO OPPOSITION** has been served on Lawrence R. Hefter, counsel for opposing party, by delivering a copy via facsimile to his usual place of business, leaving it with someone in his employment, at:

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Respectfully submitted,

November 9, 2009

ZERO MOTORCYCLES, INC.

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