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

Proceeding	91194404
Party	Defendant Webb, Derek John, O'Donnell, Hannah Sarah
Correspondence Address	DONNA J. BUNTON NIXON & VANDERHYE P.C. 901 N GLEBE RD 11TH FL ARLINGTON, VA 22203 nixonptomail@nixonvan.com
Submission	Answer
Filer's Name	Donna J. Bunton
Filer's e-mail	nixonptomail@nixonvan.com
Signature	/Donna J. Bunton/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Application Serial No. 77/711644)	Atty. Ref.: 2674-199
)	
Shuffle Master, Inc.,)	
)	
Opposer)	
)	Opposition No. 91194404
v.)	
)	
Webb, Derek John and O'Donnell,)	
Hannah Sarah,)	
)	
Applicants.)	

ANSWER TO NOTICE OF OPPOSITION

Applicants, John Derek Webb and Hannah Sarah O'Donnell (hereafter "Webb and O'Donnell), hereby answer the Notice of Opposition as follows:

1. Applicants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition and therefore deny same.

2. Answering the allegations in Paragraph 2 of the Notice of Opposition, Applicants admit that Opposer is involved in the field of casino and gaming instruments and equipment. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2 of the Notice of Opposition and therefore deny same.

3. Applicants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Notice of Opposition and therefore deny same.

4. Answering the allegations in Paragraph 4 of the Notice of Opposition, Applicants admit that Three Card Poker is a popular and successful casino game. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 of the Notice of Opposition and therefore deny same.

5. Answering the allegations in Paragraph 5 of the Notice of Opposition, Applicants specifically deny that the design shown therein and referred to as the "Coin Spot Mark" functions as a trademark. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5 and therefore deny same.

6. Answering the allegations in Paragraph 6 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6 and therefore deny same.

7. Answering the allegations in Paragraph 7 of the Notice of Opposition, Applicants admit that a photocopy of Copyright Reg. Certificate No. VA 1-680-816 entitled "Three Card Poker" for "2-D artwork" of a three card poker table layout was attached to the Notice of Opposition as Exhibit A. Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark.

Applicants lack knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 7 and therefore deny same.

8. Answering the allegations in Paragraph 8 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicants admit use of the marks (a) Three Card Poker & Three-Card Design and (b) Three-Card Design shown in Registration Nos. 2,233,569 and 2,036,848, respectively, from about March 1995 through 1999. Except as thus stated, Applicants deny the remaining allegations in Paragraph 8.

9. Applicants admit the allegations in Paragraph 9 of the Notice of Opposition.

10. Answering the allegations in Paragraph 10 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 and therefore deny same.

11. Answering the allegations in Paragraph 11 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark and deny all other allegations in Paragraph 11.

12. Answering the allegations in Paragraph 12 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark and deny all other allegations in Paragraph 12.

13. Answering the allegations in Paragraph 13 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark and deny all other allegations in Paragraph 13.

14. Answering the allegations in Paragraph 14 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 14 and therefore denies same.

15. Answering the allegations in Paragraph 15 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 and therefore denies same.

16. Answering the allegations in Paragraph 16 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16 and therefore denies same.

17. Applicants admit the allegations in Paragraph 17 of the Notice of Opposition.

18. Answering the allegations in Paragraph 18 of the Notice of Opposition, Applicants admit the filing of Application Serial No. 77/711,644 on April 10, 2002, seeking to register the Design Mark shown therein under Section 44(e) of the Trademark Act for the goods and services listed therein. Applicants specifically deny that the design referred to by Opposer as the "Coin Spot Mark" functions as a trademark and deny all remaining allegations in Paragraph 18.

19. Answering the allegations in Paragraph 19 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark. Applicants admit that certain of Opposer’s goods are competitive with certain of Applicants’ goods. Applicants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19 and therefore deny same.

20. Answering the allegations in Paragraph 20 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark. Applicants deny all remaining allegations in Paragraph 20.

21. Applicants deny all of the allegations in Paragraph 21 of the Notice of Opposition.

22. Answering the allegations in Paragraph 22 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark. Applicants deny all remaining allegations in Paragraph 22.

23. Answering the allegations in Paragraph 23 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark. Applicants deny all remaining allegations in Paragraph 23.

24. Answering the allegations in Paragraph 24 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot

Mark” or as “Opposer’s Mark” functions as a trademark. Applicants deny all remaining allegations in Paragraph 24.

25. Answering the allegations in Paragraph 25 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark. Applicants further deny that they do not have a bona fide intention to use the subject mark. Applicants admit the remaining allegations in Paragraph 25.

26. Answering the allegations of Paragraph 26 of the Notice of Opposition, Applicants admit that certain trademarks and intellectual property rights associated with Three Card Poker in the United States were assigned and licensed to Opposer. Except as thus admitted, Applicants deny all the remaining allegations in Paragraph 26.

27. Answering the allegations of Paragraph 27 of the Notice of Opposition, Applicants specifically deny that the design referred to by Opposer as the “Coin Spot Mark” functions as a trademark and deny all remaining allegations in Paragraph 27.

28. No response required.

29. Applicants deny all allegations in the Notice of Opposition not expressly admitted herein.

AFFIRMATIVE DEFENSES

Further answering:

30. On information and belief, Opposer does not use the design displayed in the Notice of Opposition and referred to therein as the “Coin Spot Mark” as a trademark. Rather, that design is used by Opposer as mere background for the words “Pair Plus,”

“Ante” and Play” which are prominently displayed thereon. Further, the combined words and background design are displayed repetitively across the lower portion of a poker table layout in the manner shown in Opposer’s copyright registration attached as Exhibit A to the Notice of Opposition. The background design does not create a separate commercial impression and is not distinctive and, therefore, does not function as an indication of source.

32. The design referred to by Opposer as the “Coin Spot Mark” is an integral and functional feature of the three card poker game table layout and does not serve as a trademark.

34. Since the design referred to by Opposer as the “Coin Spot Mark” clearly does not function as a trademark, Opposer cannot legitimately believe that it has suffered any damage as required by Section 13 of the Lanham Act (15 U.S.C. § 1063) and by Title 37, §§ 2.102, 2.104 and 1.18(b) of the Code of Federal Regulations, and therefore Opposer lacks standing to bring this Opposition.

35. Opposer’s design referred to as the “Coin Spot Mark” and Applicants’ Design mark differs markedly in terms of appearance and commercial impression such that no reasonable likelihood of confusion exists.

36. This Opposition is objectively baseless and, upon information and belief, was filed, not in a good faith belief that it was meritorious, but with the intent to directly interfere with Applicants’ business by filing a sham proceeding in this forum and, as such, this Opposition should be dismissed and sanctions awarded.

WHEREFORE, Applicants respectfully requests that the Opposition be dismissed and that it be adjudged entitled to the registration of its mark in the subject Application Serial No. 77/711,644.

Respectfully submitted,

DEREK JOHN WEBB and
HANNAH SARAH O'DONNELL

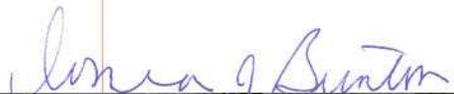
Date: May 17, 2010

By: 
Donna J. Bunton/Robert A. Rowan
Attorneys for Applicant
NIXON & VANDERHYE P.C.
901 North Glebe Road, 11th Floor
Arlington, VA 22203
703-816-4003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Notice of Opposition was served this 17th day of May, 2010, via first-class mail, postage prepaid, on counsel for Opposer:

Robert L. Sherman, Esq.
Bradford E. Young, Esq.
Paul, Hastings, Janofsky & Walker
75 East 55th Street
New York, NY 10022


Donna J. Bunton