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

Proceeding	91195774
Party	Defendant Van Nostrand, Willard Randolph, III
Correspondence Address	VAN NOSTRAND, WILLARD RANDOLPH, III 3737 E CALLE CORTEZ TUCSON, AZ 85716-5119 wrvn3md@aol.com
Submission	Answer
Filer's Name	William C. Cahill
Filer's e-mail	deniseteff@cvglaw.com
Signature	/William C. Cahill/
Date	08/31/2010
Attachments	VanNostrand-Answer.pdf (9 pages)(243641 bytes)

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

In re application of::	Willard Randolph Van Nostrand, III
Serial No.:	77/894,143
Filed:	December 15, 2009
Mark:	"LET'S GROW SOMETHING TOGETHER"
Published:	May 25, 2010

LF, LLC,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91195774
	)	
Willard Randolph Van Nostrand, III,	)	
	)	
Applicant	)	

ANSWER

Pursuant to 37 C.F.R. § 2.106 and the TBMP § 311 (revised August 1, 2007 pursuant to Federal Register / Vol. 72, No. 147), in accordance with 37 C.F.R. § 2.126, Willard Randolph Van Nostrand , III ("Applicant") hereby submits its Answer in response to the allegations set forth by LF, LLC, ("Opposer") in the Notice of Opposition dated July 23, 2010, pursuant to Institution Order sent by the Trademark Trial and Appeal Board.

Applicant answers as follows:

1. Applicant admits to the existence of Trademark Application Nos. 77/291,533, and 77/058,776 as well as to the Trademark Application No. 78/808,928. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations

set forth in Paragraph 1 of the Notice of Opposition and therefore denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant denies that the cited marks are famous, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant admits that he filed Application Serial No. 77/894,143 for the mark "LET'S GROW SOMETHING TOGETHER." in connection with the following goods in International Class 031: "Herb seeds for planting; Organic gardening kit for indoor and outdoor planting composed primarily of organic seeds for fruits, vegetables and flowers and also

including peat pots and peat pellets; Plant seeds; Seeds and bulbs; Seeds for flowers; Seeds for fruit and vegetables; Seeds for horticultural purposes; Tree growing kits composed primarily of seeds and also including peat pots and peat pellets." Applicant further admits that the application lists a date of first use in commerce at least as early as June 17, 2009. Applicant otherwise denies the allegations set forth in Paragraph 6 of the Notice of Opposition.

7. Applicant admits that registration of the "LET'S GROW SOMETHING TOGETHER." mark would provide owner of such mark with prima facie exclusive right to use "LET'S GROW SOMETHING TOGETHER." mark in commerce in connection with such goods. Applicant denies that such registration would not be subject to prior common law rights held by others. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Applicant denies that the associated marks, set forth in the related Trademark Applications cited by the Opposer, are famous and therefore denies the allegations set forth in Paragraph 9 of the Notice of Opposition.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. Applicant denies that the associated marks, set forth in the related Trademark Applications cited by the Opposer, are famous and therefore denies such claim. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 11 of the Notice of Opposition and therefore denies the same.

12. Applicant denies that the associated marks, set forth in the related Trademark Applications cited by the Opposer, are famous and therefore denies such claim. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 12 of the Notice of Opposition and therefore denies the same.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and therefore denies the same.

14. Paragraph 14 of the Notice of Opposition sets forth a prayer for relief upon grounds to which Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Notice of Opposition and therefore denies the same. Furthermore, Applicant denies that the associated marks, set forth in the related

Trademark Applications cited by the Opposer, are famous.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Notice of Opposition and therefore denies the same.

The remainder of the Notice of Opposition sets forth a prayer for relief to which no response is required, and Applicant denies that the Opposer is entitled to any relief. All allegations set forth in the Notice of Opposition not specifically addressed above are hereby denied.

WHEREFORE, Applicant prays for judgement in its favor on the allegations in the Notice of Opposition, together with the issuance of Registration of its mark set forth in Trademark Application No. 77/894,143.

SEPARATE DEFENSES

Different Class of Goods and Services

16. Applicant filed Application Serial No. 77/894,143 for the mark:

"LET'S GROW SOMETHING TOGETHER."

17. Applicant's trademark application is in connection with goods in International Class 031, namely: "Herb seeds for planting; Organic gardening kit for indoor and outdoor planting composed primarily of organic seeds for fruits, vegetables and flowers and also

including peat pots and peat pellets; Plant seeds; Seeds and bulbs; Seeds for flowers; Seeds for fruit and vegetables; Seeds for horticultural purposes; Tree growing kits composed primarily of seeds and also including peat pots and peat pellets."

18. Opposer's identified service mark set forth in Trademark Application No. 78/808,928 for: LET'S BUILD SOMETHING TOGETHER, is directed to services in International Classes 035, 036, 037, 040, 041, and 042. Such mark application does not designate any use on any matter of goods.

19. Opposer identified service mark set forth in Trademark Application No. 78/808,928 for: LOWE'S LET'S BUILD SOMETHING TOGETHER, is directed to services in International Classes 035, 036, 037, 040, 041, and 042. Such mark application does not designate any use on any matter of goods.

20. Opposer identified mark set forth in Trademark Application No. 77/291,533 for: LET'S BUILD SOMETHING TOGETHER, is directed to services in International Classes 035, 038, and 041. Further, such mark application only designates goods within the two International Classes of 009 and 016 for video and print material (for promoting ideas for home improvement, gardening and woodworking projects).

21. Applicant's listing of goods differs significantly from Opposer's listing of services and promotional goods video and literature, such as to lead to little or no likelihood of

confusion between the sources of origin for such products.

Different Channels of Trade

22. Opposer primarily uses their mark(s) in conjunction with its home improvement retail services and retail stores, as seen at www.lowes.com and http://investor.shareholder.com/lowes/.

23. Applicant operates Grandpa Gardener and Grandpa Gardener Educational Program for elementary aged students, Garden-Based Professional Development Workshops for educators and child-care providers of children ages 4 to 7, and free StoryTimes with Grandpa Gardener for children ages 4 to 7. Further, Applicant distributes sample seed packages to children and educators using his mark.

24. Opposer and Applicant practice in such different channels of trade that use of Applicant's mark in association with the distribution of seeds to children and educators through his educational programs is not likely to be confused for services and products offered by Opposer.

Difference in Marks

25. As an educator seeking to properly guide elementary children, Applicant provides seeds to children and care-takers of children, with a mark that properly conveys basic grammar to students. Applicant's mark includes a complete quoted sentence with quotations, proper

grammar and sentence punctuation that conveys to children a sense of communication with a grandpa and/or gardener.

26. Applicant's mark, as a communication and educational tool, differs sharply from Opposer's mere catch phrase slogan as to limit or eliminate any potential and likelihood of confusion.

WHEREFORE, Applicant prays for judgement in its favor on the allegations in the Notice of Opposition, together with the issuance of Registration of its mark set forth in Trademark Application No. 77/894,143.

Please charge any additional fees incurred by Applicant in conjunction with this proceeding to the firm's Deposit Account No. 03-0088.

Date: August 31, 2010

Respectfully Submitted,

William C. Cahill
Matthew L. Bycer
CAHILL GLAZER PLC
155 Park One
2141 E. Highland Avenue
Phoenix, Arizona 85016
Telephone: (602) 956-7000
Facsimile: (602) 956-4298
cahill@cvglaw.com
mbycer@cvglaw.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Applicant's ANSWER was mailed, First Class, postage prepaid via the United States Postal Service on this 31st day of August, 2010, to:

J. Mark Wilson
Kathryn G. Cole
MOORE & VAN ALLEN, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28280

Denise L. Teff