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

Proceeding	91195777
Party	Defendant John D. McLean DBA Rukkus Industries
Correspondence Address	JOHN D. MCLEAN RUKKUS INDUSTRIES 466 RIVERVIEW CRESCENT COQUITLAM, CANADA jdmclean@shaw.ca
Submission	Answer
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Date	08/30/2010
Attachments	TTAB ANSWER - RANDI BOY.pdf (5 pages)(147443 bytes)

5. Applicant admits that the United States Patent and Trademark Office's TESS database indicate that Opposer is the owner of trademark application cited in Paragraph 5 of the Notice of Opposition; however, Applicant has insufficient knowledge or information as to whether the application referenced in Paragraph 5 of the Notice of Opposition is a "valid subsisting application in full force and effect," and therefore, denies said allegations.
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 allegations.
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 allegations.
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 allegations.
9. Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

12. As a first and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that no likelihood of confusion, mistake or deception exists between Opposer's marks and Applicant's mark.
13. As a second and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's mark is not confusingly similar in appearance, sound, connotation or commercial impression to Opposer's marks.

14. As a third and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's use of Applicant's mark has not interfered with or harmed Opposer's marks, reputation or good will, and Opposer has not shown any injury or damage to Opposer's business reputation or quality of goods or services relating thereto.
15. As a fourth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant adopted and created its mark in good faith and without any intent to confuse or deceive the public.
16. As a fifth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that there is no likelihood of confusion because the United States Patent and Trademark Office did not cite Opposer's marks as bars or grounds for a refusal to registration of Applicant's mark after considering the reality of the marks existing simultaneously in the marketplace.
17. As a sixth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Applicant's use of Applicant's mark has not diluted or tarnished Opposer's marks in any manner because Opposer's marks are not famous, and therefore, incapable of being diluted or tarnished.
18. As a seventh and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of laches.
19. As an eighth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of estoppel.

20. As a ninth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of acquiescence.
21. As a tenth and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery by the doctrine of waiver.
22. There may be additional affirmative defenses to the claims alleged by Opposer that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend its Answer to allege additional affirmative defenses in the event discovery of additional information indicates they are appropriate.

Dated as of: August 30, 2010

By: /evananderson/

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PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** has been served on Jon M. Leader, counsel for Opposer, on August 30, 2010, via First Class U.S. Mail, postage prepaid to:

Jon M. Leader
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Amanda Longmore