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

Proceeding	91196497
Party	Defendant A.V. Denim, Inc.
Correspondence Address	JOSEPH T. NABOR FITCH, EVEN, TABIN & FLANNERY 120 S LASALLE ST STE 1600 CHICAGO, IL 60603-3590 trademark@fitcheven.com
Submission	Answer
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Signature	/Joseph T. Nabor/
Date	10/26/2010
Attachments	98613 Answer_1.PDF (6 pages)(249490 bytes)

ANSWER: Denied.

4. Opposer has used pocket flaps that are, and has stitched pocket flaps in a manner that is, identical or similar to Applicant's proposed mark. These uses predate Applicant's alleged date of first use, are associated with Opposer, and are so similar to Applicant's proposed mark that Applicant's proposed mark is likely to cause confusion, or to cause mistake, or to deceive.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

5. Opposer is also the owner of the distinctive Arcuate Stitching Design Trademark (hereinafter the "Arcuate Trademark"), as reflected in the following representative registrations issued on the Principal Register, which are in full force and effect:

Registration No.	Registration Date
404,248	November 16, 1943
1,139,254	September 2, 1980
2,794,649	December 16, 2003

Since at least as early as 1873, LS&Co. continuously has used its Arcuate Trademark on a variety of goods, including jeans, pants, shorts, and skirts. LS&Co.'s dates of adoption and first use of its Arcuate Trademark long precede Applicant's alleged date of first use.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

6. Since adoption and first use of LS&Co.'s Arcuate Trademark, LS&Co. continuously has marketed and is presently marketing its goods nationwide. LS&Co. has expended and continues to expend substantial time, money, and effort in promoting its

Arcuate Trademark to identify LS&Co. as the source of the goods displaying that trademark. As a result, LS&Co.'s goods are identified as originating from LS&Co. through the display of the Arcuate Trademark, and the public recognizes LS&Co. as the source of goods displaying the mark. By virtue of its long use and promotion of the Arcuate Trademark, LS&Co. has gained a valuable reputation for the mark and has developed exceedingly valuable goodwill in the mark.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

7. Because of Opposer's prior uses of pocket flaps and stitching on pocket flaps, and/or Opposer's ownership, registration, and use of the Arcuate Trademark, registration of Applicant's mark will lead the public to conclude, incorrectly, that Applicant is or has been, and Applicant's goods displaying the mark are or have been, authorized, sponsored, or licensed by LS&Co. Issuance of any registration to Applicant for the mark at issue is therefore contrary to the provisions of 15 U.S.C. § 1052(a) and will result in damage to LS&Co. and the public.

ANSWER: Denied.

8. Applicant's mark is deceptively similar to Opposer's prior uses of pocket flaps and stitching on pocket flaps, and/or Opposer's Arcuate Trademark, so as to cause confusion, or to cause mistake or to deceive the public as to the origin of Applicant's goods, to the harm and damage of LS&Co. and the public. Therefore, registration of Applicant's mark is prohibited by 15 U.S.C. § 1052(d).

ANSWER: Denied

9. LS&Co.'s Arcuate Trademark is distinctive and famous within the meaning of 15 U.S.C. § 1125(c). The proposed mark has caused or is likely to cause dilution of the distinctive quality of LS&Co.'s Arcuate Trademark, in violation of 15 U.S.C. § 1125(c), to the harm and damage of LS&Co. and the public. Therefore, registration of the proposed mark may be refused under 15 U.S.C. §§ 1052 and 1063(a).

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

10. Registration of the proposed mark would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Opposer and the public would be harmed as a result.

ANSWER: Applicant admits that issuance of the Registration of the mark shown in the subject Application would constitute prima facie evidence of the validity of such registration, Applicant's ownership of the mark, and Applicant's exclusive right to use the mark pursuant to the provisions of 15 U.S.C. § 1057(b). Applicant denies that the Opposer and the public would be harmed as a result of issuance of the Registration of the mark shown in the subject Application.

Applicant hereby denies each and every allegation contained in the Notice of Opposition which is not otherwise herein responded to.

AFFIRMATIVE DEFENSES

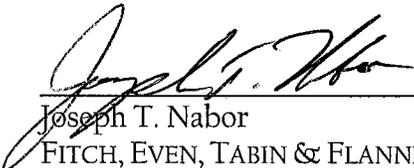
For its affirmative defenses to the Opposition, Applicant states as follows:

1. The Notice of Opposition fails to adequately state a claim upon which relief maybe granted.
2. On information and belief, any mark currently known to be used by Opposer is sufficiently different from the subject mark such that confusion is not likely, particularly the fact that the specified Opposer's Design marks are different than Applicant's Design mark in appearance and in light thereof, no risk of confusion exists for the consumers.
3. On information and belief, the Applicant is aware of no instances of confusion which have occurred among consumers.

THEREFORE, Applicant respectfully prays that opposition to registration of its Miscellaneous Design mark, Application Serial No. 77/665,211, be dismissed, that a Notice of Allowance for Application Serial No. 77/665,211 be issued, and that Applicant be granted such other and further relief as the Board deems just and proper.

Respectfully submitted,
A.V. Denim, Inc.

October 26, 2010



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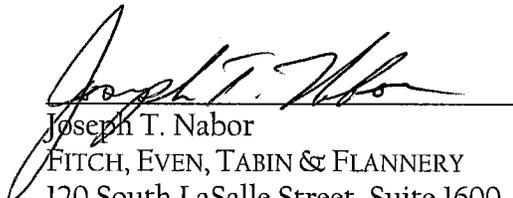
CERTIFICATE OF SERVICE

I, Joseph Nabor, Attorney for the Applicant, hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by first class mail, postage prepaid, upon:

Gia L. Cincone, Esq.
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Attorneys for Opposer

on this 26th day of October 2010.


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