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

Proceeding	91197393
Party	Defendant Beyond The Box, Inc.
Correspondence Address	BEYOND THE BOX, INC. BEYOND THE BOX, INC. 116 LOWES FOODS DR # 132 LEWISVILLE, NC 27023-8258 funornone@gmail.com
Submission	Answer
Filer's Name	MICHAEL TODD TUCKER
Filer's e-mail	funornone@gmail.com
Signature	MICHAEL/TODD/TUCKER
Date	12/27/2010
Attachments	DualRESPESTTA91197393.pdf (6 pages)(60594 bytes)

December 24, 2010

ESTTA Tracking Number: 91197393, 91197395

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

ANSWER TO NOTICE OF OPPOSITION

Notice is hereby given that the following party (defendant) answers the opposition of the indicated application.

In the matter Application Serial No. 77/900,545

Filed on December 27, 2009

For the mark FIGHT LIKE A CAROLINA GIRL

Published in the Official Gazette (Trademarks) on May 18, 2010

TSDC, LLC

And

Sandra Ellis

Opposers,

Opposition No.: _____

v.

Beyond The Box, Inc.,

ATTN: TRADEMARK TRIAL AND APPEAL BOARD

P.O. Box 1451

ALEXANDRIA, VA. 22313-1451

Beyond The Box, Inc. (Hereinafter referred to as “BTB”), a company organized and existing under the laws of the State of North Carolina, having a business address at 116 Lowes Foods Drive, #132, Lewisville, NC 27023 are herein referred to as “Applicant (acting as Agent of END THE FIGHT) and or Defendant” provide the following answers and counterclaims to TSDC, LLC (hereinafter referred to as “TSDC”), a limited liability company organized and existing under the laws of the State of Ohio, having a business address at P.O Box 45034, Cleveland, Ohio 44145 and Sandra Ellis (hereinafter referred to as “ELLIS”), a sole proprietor with her business located in the State of Ohio, having a business address at P.O. Box 45034, Cleveland, Ohio 44145 (TSDC and ELLIS are hereinafter referred to as “Opposers”).

Response to the grounds for opposition is as follows:

1. Admitted.
2. Admitted regarding marketing and sale of apparel. Denied regarding a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life threatening diseases.
3. Admitted.
4. Admitted.
5. Admitted regarding “alleged” use date of at least as early as May 12, 2010. Denied regarding providing a forum for the interaction between those who suffer or are affected by ailments and life threatening diseases.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted regarding use of marks for marketing and selling goods for profit. Denied regarding the provision of services for organizing and providing a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life-threatening diseases.
10. Admitted regarding use of mark for marketing and sale of wearing apparel and other products. Denied regarding the marketing and provision of services for organizing and providing a forum for the fight against cancer and the interaction between those who suffer or are affected by ailments and life-threatening diseases.
11. Denied regarding first use “reported” date of May 12, 2010. Applicant applied for use of FIGHT LIKE A CAROLINA GIRL as a federal mark on

December 23, 2009. Applicant applied for the FIGHT LIKE A CAROLINA GIRL federal mark more than six (6) months before the OPPOSERS filed for their marks of FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER and FIGHT LIKE A GIRL CLUB that according to the PTO System was 7/09/2010.

12. Denied regarding first use “reported” date of May 12, 2010. Applicant applied for use of FIGHT LIKE A CAROLINA GIRL as a federal mark on December 23, 2009. Applicant applied for the FIGHT LIKE A CAROLINA GIRL federal mark more than six (6) months before the OPPOSERS filed for their mark of FIGHT LIKE A GIRL CLUB – CLAIM YOUR POWER AND FIGHT LIKE A GIRL CLUB that according to the PTO System was 7/09/2010.
13. Denied.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted with exception. Exception being that an intent to use cannot be applied for during the “blackout” period. It was communicated to OPPOSERS counsel in June of 2010 that APPLICANT intended to transfer ownership of the mark in question to END THE FIGHT a non-profit firm organized and operating in the state of North Carolina. Furthermore, APPLICANT communicated to OPPOSERS counsel that END THE FIGHT fully intended to use the mark in question once the blackout period occurred and the mark was granted. APPLICANT also communicated to OPPOSERS and OPPOSERS agreed that the ONLY reason APPLICANT was granting OPPOSERS an extension to object was under the condition that OPPOSERS intended and would negotiate in good faith in order to work out a mutually agreeable solution that was a win for the APPLICANT and it’s assigns and the OPPOSERS. Upon information and belief, OPPOSERS did NOT negotiate in good faith.
18. Denied. APPLICANT cannot file an Allegation of Use in the Application until the “blackout” period has expired. Furthermore the mark Fight Like a Carolina Girl mark has been in continuous commercial use since January 4, 2010 and has not been abandoned.
19. Denied.
20. Denied with prejudice.
21. Denied.
22. Admitted with exception. Exception being that OPPOSERS business is to apparently profit from people suffering from cancer and their associated families and friends.

23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Denied.

Counterclaims against OPPOSERS:

1. OPPOSER failed to submit service on APPLICANT in a timely manner. Letter was postmarked Tuesday November 16, 2010. One day later than required by USPTO rules. Therefore, Notice of Opposition should be denied summarily.
2. Upon information and belief, OPPOSERS attempted and obtained information from APPLICANT under false pretenses.
3. Upon information and belief, OPPOSERS used information gained under false pretenses to gain an “unfair” advantage over APPLICANT under the guise of simply asking for an extension for time to oppose APPLICANT’S Application so that both parties could continue to negotiate in good faith a solution that constituted a “win-win” for OPPOSERS and APPLICANT.
4. Whereas, in fact, OPPOSERS have actually harmed APPLICANT and END THE FIGHT by using the Opposition period extension granted by APPLICANT (acting as a gratis agent of END THE FIGHT) to actually modify their own marks AFTER APPLICANT filed the application for it’s mark. The information used for constructing the OPPOSERS Notice of Opposition was obtained from APPLICANT under false pretenses based upon information and belief.

WHEREFORE, APPLICANT (acting as agent of END THE FIGHT) believes that registration of application Trademark Application Serial No. 77/900,545 for the mark FIGHT LIKE A CAROLINA GIRL will NOT damage OPPOSERS, and pray that registration of Trademark Application Serial no. 77/900,545 in International Class 025 be approved.

TIME FOR FILING

“When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday.” The Trademark Trial and Appeal Board set a deadline of December 25, 2010 within which to submit an Answer to the Notice of Opposition against the identified mark in this matter. December 25, 2010 was a Saturday and a Federal Holiday. Today, December 27, 2010 is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia. Accordingly, this Answer to Notice of Opposition is timely.

Signed: MICHAEL TODD TUCKER Date: 12/27/2010

Michael Todd Tucker

President

Beyond The Box, Inc.

