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

Proceeding	91197706
Party	Defendant Strandberg, Tamara Jane
Correspondence Address	STRANDBERG, TAMARA JANE INK&IRON 422 1ST ST DAVIS, CA 95616-4669 UNITED STATES trademarks@hptb-law.com
Submission	Answer and Counterclaim
Filer's Name	Christopher J. Palermo
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Signature	/ChristopherJPalermo#42056/
Date	10/12/2011
Attachments	0011-91197706-Answer2.pdf ( 8 pages )(33739 bytes )

**Registration Subject to the filing**

Registration No	3997161	Registration date	07/19/2011
Registrant	Keen Entertainment LLC 16478 Beach Blvd., Suite 316 Westminster, CA 92683 UNITED STATES		

**Goods/Services Subject to the filing**

Class 041. First Use: 2003/04/00 First Use In Commerce: 2003/04/28

All goods and services in the class are requested, namely: Conducting entertainment exhibitions in the nature of art, tattoo, motor vehicle, vehicle customization, body customization, namely, body alteration, live music, and culture shows and festivals; Entertainment, namely, production of an art, tattoo, motor vehicle, vehicle customization, body customization, namely, body alteration, and live music festival; Organization of cultural shows; Organizing community festivals featuring primarily art, tattoos, motor vehicles, vehicle customization, body customization, namely, body alteration, live music and related culture and also providing vendors, tattoo artists and contests; Organizing cultural and arts events; Organization of exhibitions for cultural purposes; Organizing and arranging exhibitions for entertainment purposes

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

KEEN ENTERTAINMENT LLC	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/197,706
	)	
STRANDBERG, TAMARA JANE	)	Serial No. 77/896,745
Applicant	)	
_____	)	

**ANSWER, AFFIRMATIVE DEFENSES & COUNTERCLAIM**

Now comes Applicant Tamara Jane Strandberg, doing business as INK&IRON, and answers the Notice of Opposition, asserts affirmative defenses and counterclaims against Opposer as follows:

1. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 1 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.
2. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 2 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.
3. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 3 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.
4. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 4 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.
5. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 5 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

6. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 6 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

7. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 7 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

8. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 8 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

9. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 9 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

10. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 10 of the Notice of Opposition and on that basis each and every one of the same allegations is denied.

11. Applicant denies each and every one of the allegations of paragraph 11 of the Notice of Opposition.

12. Applicant denies each and every one of the allegations of paragraph 12 of the Notice of Opposition.

13. Applicant denies each and every one of the allegations of paragraph 13 of the Notice of Opposition.

14. Applicant lacks sufficient information to verify the truth or falsity of the allegations of paragraph 14 of the Notice of Opposition and on that basis each and every one of the same allegations is denied. The allegations in Applicant's US trademark application 77/896,745 are self-evident from the records of the USPTO. The Notice of Opposition appears to misstate the content of the records.

15. Applicant denies each and every one of the allegations of paragraph 15 of the Notice of Opposition.

16. Applicant denies each and every one of the allegations of paragraph 16 of the Notice of Opposition.

17. In answer to the allegations of paragraph 17 of the Notice of Opposition, Applicant repeats and incorporates herein its answers to paragraphs 1 through 16 of the Notice of Opposition as if such answers were set forth in full herein.

18. Applicant denies each and every one of the allegations of paragraph 18 of the Notice of Opposition.

19. Applicant denies each and every one of the allegations of paragraph 19 of the Notice of Opposition.

20. Applicant denies each and every one of the allegations of paragraph 20 of the Notice of Opposition.

21. Applicant denies each and every one of the allegations of paragraph 21 of the Notice of Opposition.

22. In answer to the allegations of paragraph 22 of the Notice of Opposition, Applicant repeats and incorporates herein its answers to paragraphs 1 through 21 of the Notice of Opposition as if such answers were set forth in full herein.

23. Applicant denies each and every one of the allegations of paragraph 23 of the Notice of Opposition.

24. Applicant denies each and every one of the allegations of paragraph 24 of the Notice of Opposition.

25. In answer to the allegations of paragraph 25 of the Notice of Opposition, Applicant repeats and incorporates herein its answers to paragraphs 1 through 24 of the Notice of Opposition as if such answers were set forth in full herein.

26. Applicant denies each and every one of the allegations of paragraph 26 of the Notice of Opposition.

27. Applicant denies each and every one of the allegations of paragraph 27 of the Notice of Opposition.

28. Applicant's mark is strong, unique and distinctive. The parties' respective marks are different in appearance, spelling, and commercial impressions. The parties' goods and services travel in different channels of trade. Applicant does not provide the services identified in Opposer's registration. Upon information and belief, Opposer's services, to the extent actually offered, are limited to the field of the love of hot rods-Kustoms, live music, burlesque, art shows, 50's fashion, tattoos, car shows, music, pinups clad in corsets, Classic Cats with Pompadours, mohawks, fashion mullets, full sleeves and back pieces, and pin striping; Applicants' goods are dissimilar, non-competitive and not proximate. Applicant's mark has coexisted with Opposer's mark without actual confusion for a substantial period of time; Opposer has asserted no evidence of actual confusion. Applicant's customers and Opposer's customers use a degree of care in selecting the source of services that eliminates any likelihood of confusion as to source. There is no market interface between the parties and Applicant selected its mark innocently. All relevant factors under *AMF, Inc v Sleekcraft Boats*, 599 F.2d 341 (C.A.9) 1979, and/or *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), favor Applicant.

29. Therefore, Applicant's mark and Opposer's mark are not likely to cause confusion, mistake or deception to relevant consumers or purchasers as to the source of the goods and services that the Applicant offers and the Opposer may offer and therefore Opposer has no claim under 15 U.S.C. 1052.

#### **FIRST AFFIRMATIVE DEFENSE—UNCLEAN HANDS**

30. Applicant repeats and re-alleges the answers and allegations set forth in paragraphs 1 to 29 inclusive as if fully set forth herein.

31. Upon information and belief, Opposer is engaged in a practice of trademark bullying, namely, using actual or asserted trademark rights to harass and intimidate another business beyond what the law might reasonably interpreted to allow. Any goods and services

offered by Opposer under the sign INK-N-IRON are not reasonably related to Applicant's goods and services. Opposer is attempting to unfairly raise the cost of entry for Applicant to compete in the marketplace by filing this opposition with the TTAB. Applicant is a small business that is harmed by Opposer's litigation tactics wherein Opposer attempts to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to the trademark owner.

32. The practice of trademark bullying engaged in by the Opposer gives the Opposer unclean hands and bars relief to Opposer.

**SECOND AFFIRMATIVE DEFENSE—LACHES AND ACQUIESCENCE**

33. Applicant repeats and re-alleges the answers and allegations set forth in paragraphs 1 to 32 inclusive as if fully set forth herein.

34. Applicant's US trademark application 77/896,745 accurately states facts pertinent to Applicant's actual and constructive use of the mark INK&IRON for the goods set forth in the application. Applicant's mark has been in open, notorious, actual use on tangible goods in commerce and has been the subject of an application for registration for a long period of time including at least as early as the dates set forth in the application. Upon information and belief, Opposer has been aware of Applicant's use of the mark for a long period of time, but Opposer has not taken timely action to raise any form of objection regarding Applicant's use.

35. Opposer has delayed taking any action to raise any form of objection regarding Applicant's use for a period longer than that recognized in the law as effective for obtaining a legal remedy. Therefore, relief to Opposer is barred by laches.

36. Opposer has acquiesced in Applicant's use of Applicant's mark for a period of time longer than that recognized in the law as effective for obtaining a legal remedy. Therefore, relief to Opposer is barred by acquiescence.

WHEREFORE, Applicants believe that they are entitled to registration and pray that the Notice of Opposition shall be dismissed and all relief to Opposer shall be denied.

## **COUNTERCLAIM FOR CANCELLATION**

37. Applicant repeats and re-alleges the answers and allegations set forth in paragraphs 1 to 36 inclusive as if fully set forth herein.

38. Upon information and belief, when considered in connection with the services identified in Opposer's pleaded US trademark application 85/189,804 (now US registration 3997161), the formative "ink" in Opposer's mark is synonymous with and merely descriptive of tattoos or tattoo art, the formative "-n-" is synonymous with the word "and," and the formative "iron" in Opposer's mark is synonymous with and merely descriptive of metal or steel needles used in applying tattoos, and/or motor vehicles that are principally made of steel comprising iron, and/or vessels such as the Queen Mary that are principally made of steel comprising iron, and/or things or persons that are tough or strong. Thus Opposer's mark merely describes the character or quality of any goods or services with which Opposer's mark, pleaded application or registration may be used, such as entertainment, shows, or festivals relating to tattoos or motor vehicles or held on vessels such as the Queen Mary, or attended by persons who are or wish to be seen as tough or strong.

39. Upon information and belief, Opposer has failed to make any form of bona fide use in interstate commerce, or has abandoned any use, of any mark that is confusingly similar to Applicant's mark for any one or more of: printed materials, including art and artwork; clothing, including T-shirts, hats, bandannas, and belt buckles.

40. Applicant has priority of use, based on actual use and/or constructive use, for the mark INK&IRON in connection with at least printed materials. Applicant is the senior party with respect to the use of a mark containing "INK" and "IRON" for printed materials.

41. Therefore, Opposer has accrued no rights at common law that are valid or enforceable against Applicant with respect to printed materials, including art and artwork; clothing, including T-shirts, hats, bandannas, and belt buckles. None of the aforesaid goods fall within the scope of the services that are presently recited in registration 3997161.

42. Upon information and belief, Opposer does not use its mark in interstate commerce or other commerce that Congress may lawfully regulate. Upon information and belief, Opposer solely offers an annual event in Long Beach, California and does not offer the services identified in its pleaded application 85/189,804 or registration 3997161, or any of the goods or services identified as Opposer's goods and services in the Notice of Opposition, on an interstate basis.

43. Therefore, Opposer's mark is merely descriptive of any goods or services that Opposer may provide; Opposer's registration 3997161 is invalid under at least 15 U.S.C. §1052(e); and Opposer's registration 3997161 and/or other rights are unenforceable against Applicant.

WHEREFORE, Applicant prays that the Board shall cancel US Trademark Reg. No. 3997161 in its entirety and shall partially cancel the registration at least to the extent that Opposer contends that the identification of goods and services recited in the registration shall not cover printed materials, including art and artwork; clothing, including T-shirts, hats, bandannas, and belt buckles.

Please address all correspondence to Applicants to the undersigned.

Dated: October 12, 2011

Respectfully submitted,

TAMARA JANE STRANDBERG  
DBA INK&IRON

By /ChristopherJPalermo/  
Christopher J. Palermo

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/cjp  
60251-0011

CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted and submitted, in PDF format, to the Trademark Trial & Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) on October 12, 2011.

By           /ChristopherJPalermo            
Christopher J. Palermo

CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Opposer, Keen Entertainment LLC by and through its counsel of record, by United States First Class Mail, with postage affixed thereon and fully prepaid, on October 12, 2011 to:

Arash Samadani  
Samadani Law AOC  
2070 N. Tustin Avenue  
Santa Ana, CA 92705-7827

By           /ChristopherJPalermo            
Christopher J. Palermo