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

Proceeding	91197998
Party	Defendant Pure Fishing, Inc.
Correspondence Address	JULIE C VANDERZANDEN K-2 CORPORATION 6TH AVENUE SOUTH SEATTLE, WA 98108 UNITED STATES trademarks@k2sports.com
Submission	Answer
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Signature	/Angelica M. Colwell/
Date	02/03/2011
Attachments	Answer to Toro Notice of Opposition.pdf (6 pages)(174009 bytes)

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

THE TORO COMPANY,	)	
	)	
Opposer,	)	Opposition No. 91197998
	)	
v.	)	
	)	Mark: TORO
PURE FISHING, INC.	)	
	)	
Applicant	)	

Trademark Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1451
Alexandria, Virginia 22313-1451

APPLICANT PURE FISHING, INC.'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION

Applicant PURE FISHING, INC., by and through its undersigned counsel, answers the Notice of Opposition filed by Opposer THE TORO COMPANY as follows:

1. Every allegation in the Notice of Opposition, including any and all subparagraphs, not specifically admitted herein is denied and strict proof thereof is demanded.
2. Applicant admits the allegations of Paragraph 1 of the Notice.
3. Applicant admits the allegations of Paragraph 2 of the Notice.
4. Applicant admits, upon information and belief, so much of paragraph 3 of the Notice as alleges, or may be construed to allege, that Applicant sells products under the name TORO, but lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of Paragraph 3 of the Notice and, therefore, denies same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation concerning Opposer's TORO trademark as alleged in Paragraph 4 of the Notice and, therefore, denies the allegations.
6. Applicant admits the allegations of Paragraph 5 of the Notice.
7. Answering Paragraph 6 of the Notice, Applicant admits, upon information and belief that, prior to the filing date of Applicant's TORO application, Opposer adopted and used TORO in interstate commerce, but lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 6 of the Notice and, therefore, denies same.
8. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation concerning Opposer's TORO trademark as alleged in Paragraph 7 of the Notice and, there, denies the allegations.
9. Paragraph 8 of the Notice is denied as stated.
10. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations alleged in Paragraph 9 of the Notice and, there, denies the allegations.
11. Applicant admits so much of Paragraph 10 as alleges that Opposer holds certain registrations with the United States Patent and Trademark Office as described therein. The remaining allegations of Paragraph 10 constitute legal conclusions to which Applicant is not required to respond.
12. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations alleged in Paragraph 11 of the Notice and, therefore, denies same.

13. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations alleged in Paragraph 12 of the Notice and, therefore, denies same.

14. Applicant admits, upon information and belief, only so much of Paragraph 13 as alleges that the mark TORO for which Applicant seeks registration is similar in sound and appearance to Opposer's previously used and registered TORO mark. The remaining allegations of Paragraph 13are denied.

15. Paragraph 14 of the Notice is denied as stated.

16. Applicant admits, upon information and belief, only so much of Paragraph 15 as alleges that the goods of Applicant and Opposer may be sold in coincident geographical areas. The remaining allegations of Paragraph 15are denied.

17. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16 of the Notice and, therefore, denies the allegations.

18. Paragraph 17 of the Notice is denied as stated.

19. Paragraph 18 of the Notice is denied as stated.

20. Paragraph 19 of the Notice is denied as stated.

21. Paragraph 20 of the Notice is denied as stated.

22. Applicant admits the allegations of Paragraph 21 of the Notice.

FURTHER ANSWERING THE NOTICE OF OPPOSITION AND AS A SECOND DEFENSE THERETO
(Dismissal)

23. Applicant repeats and reiterates the above paragraphs, as if set forth verbatim herein.

24. Opposer's Notice of Opposition fails to state facts sufficient to constitute grounds for opposition of Applicant's application and should, therefore, be dismissed.

FURTHER ANSWERING THE NOTICE OF OPPOSITION AND AS A THIRD DEFENSE THERETO
(Estoppel)

25. Applicant repeats and reiterates the above paragraphs, as if set forth verbatim herein.

26. Applicant's Opposition is barred by the doctrine of estoppel.

FURTHER ANSWERING THE NOTICE OF OPPOSITION AND AS A FOURTH DEFENSE THERETO
(No Likelihood of Confusion)

27. Applicant repeats and reiterates the above paragraphs, as if set forth verbatim herein.

28. Applicant's intended use of TORO on fishing rods and fishing reels is not likely to cause confusion or mistake as to the source of applicant's goods and those marketed by Opposer under the mark TORO.

29. Upon information and belief and as stated by Opposer, it uses TORO on landscape equipment and underground irrigation systems, neither of which relates to or is associated with fishing products. Potential customers are not likely to believe that Applicant's fishing rods and reels are related to, or originate from, Opposer.

FURTHER ANSWERING THE NOTICE OF OPPOSITION AND AS A FIFTH DEFENSE THERETO
(No Dilution)

30. Applicant repeats and reiterates the above paragraphs, as if set forth verbatim herein.

31. Applicant's use of TORO on fishing rods and reels will not dilute Opposer's mark.

32. Not only are the goods unrelated and there is no likelihood of confusion, but there are multiple users of TORO marks in the United States for an array of products and services,

many of which relate to outdoor activities. By way of example and upon information and belief, TORO is used on beer, plaid shirts, and motocross racing.

33. The U.S. Register also shows multiple examples of TORO marks, including TORO on pet chew toys (#3295595), TORO on a mascot for a football team (#2839145), TORO on western style boots (#2415058), TORRO on metal hose clamps (#1216365) and TORO TORO on cigars (#2879862), to name a few.

WHERFORE, Applicant requests that Application Serial No. 77/255,909 for registration of the mark TORO be permitted to proceed and allowed, and that this Opposition be sustained in favor of Applicant.

NEXSEN PRUET, LLC:

By: /Angelica M. Colwell/

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Dated: February 3, 2011

CERTIFICATE OF SERVICE

This is to certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION has been served upon the following counsel of record by mailing a copy of the same in the United States mail, first class postage prepaid, addressed as shown below this 3rd day of February, 2011.

Linda M. Byrne
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ATTORNEY OF RECORD FOR THE TORO COMPANY

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