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

|                        |   |
|------------------------|---|
| Proceeding             | 91198129  |
| Party                  | Defendant<br>JASON VERHOEVEN,   |
| Correspondence Address | R. JOSEPH TROJAN<br>TROJAN LAW OFFICES<br>9250 WILSHIRE BLVD STE 325<br>BEVERLY HILLS, CA 90212-3376<br>UNITED STATES |
| Submission             | Answer  |
| Filer's Name           | R. Joseph Trojan  |
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| Signature              | /R. Joseph Trojan/  |
| Date                   | 02/18/2011  |
| Attachments            | Answer to Opp.pdf ( 5 pages )(97816 bytes )   |

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

\_\_\_\_\_)  
Kyle R. Applegate )  
 )  
Opposer, )  
 )  
v. )  
 )  
Jason Verhoeven, )  
 )  
Applicant. )  
\_\_\_\_\_)

**Opposition No. 91198129  
Serial No. 77761319  
Mark: VENDETTA**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER TO THE NOTICE OF OPPOSITION**

Applicant Jason Verhoeven (“Applicant”), by his attorneys, answers the Notice of Opposition filed by Kyle R. Applegate (“Opposer”) in the above-referenced matter as follows:

**RESPONSES TO ALLEGATIONS IN THE NOTICE OF OPPOSITION**

1. Applicant admits the allegations set forth in this paragraph.
2. Applicant admits the allegations set forth in this paragraph.
3. Applicant admits the allegations set forth in this paragraph.
4. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in this paragraph.
5. Applicant denies the allegations set forth in this paragraph.

All averments not specifically admitted are denied.

**GENERAL ALLEGATIONS**

In further answer to the Notice of Opposition Applicant asserts that:

6. Vendetta Clothing, Inc., a California corporation having a mailing address that is the same of that of the Opposer (541 N. 14<sup>th</sup> St., Grover Beach, CA 93433), filed a trademark application to register the mark “Vendetta Clothing” for shirts, jackets, and shoes in International Class 25 on October 18, 2004. The trademark application was signed by Opposer, Kyle Applegate, who is indicated to be the President of Vendetta Clothing, Inc. Opposer originally filed the application under §§ 1(a) and 1(b) of the Trademark Act, and declared under oath that the mark was first used anywhere in 2001 and first used in commerce in 2002. Opposer subsequently amended the filing basis to § 1(b) and disclaimed the term “Clothing” in the mark. The mark was then suspended on July 6, 2006 pending disposition of trademark application serial numbers 76615052, 76569135, 76569134, and 78315770. The suspension was withdrawn but the trademark application was abandoned on July 12, 2010 for failure to file a statement of use.

7. Opposer did not file a petition to revive the application for “Vendetta Clothing.” Instead he filed a new trademark application under an intent-to-use basis, § 1(b), for VENDETTA on July 20, 2010 in his own name. Despite previous inconsistent allegations of use, failure to file a statement of use, and a current intent to use filing basis, Opposer now claims in his Notice of Opposition that he has used the mark at least as early as January 2006.

8. Opposer should be estopped from making any claim of first use in view of blatant contradictions made under oath.

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## AFFIRMATIVE DEFENSES

Applicant repeats and realleges its responses in the above paragraphs as if set forth fully herein. Answering further, Applicant avers:

9. Opposer fails to state a claim upon which relief may be granted.
10. Opposer lacks standing.
11. Opposer abandoned the mark.
12. The claims asserted by Opposer are barred by the doctrine of estoppel.
13. The claims asserted by Opposer are barred by the doctrine of unclean hands.
14. Opposer engaged in fraud on the United States Patent and Trademark Office.
15. There is no likelihood of confusion.
16. Applicant's application was filed prior to Opposer's application and publication of Opposer's mark.
17. Opposer's *de minimus* use of the mark, if any, did not provide the requisite notice to Applicant of his use of the mark.
18. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Applicant reserves the right to assert additional affirmative defenses as may become available in this Opposition.

WHEREFORE, Applicant requests that the Opposition of Kyle R. Applegate be dismissed and that Applicant's mark be issued a Certificate of Registration upon the principal register of the United States Patent and Trademark Office.

Respectfully submitted,  
TROJAN LAW OFFICES

Dated: February 18, 2011

By: /R. Joseph Trojan/  
R. Joseph Trojan  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION has been served on Victoria A. Carver by mailing said copy on February 18, 2011, via First Class Mail, postage pre-paid, to:

Victoria A. Carver  
Carver Law  
170 Kenwood Avenue, #255  
Oneida, NY 13421

/R. Joseph Trojan/  
R. Joseph Trojan