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

Proceeding	91199874
Party	Defendant EXP613, LLC
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Date	06/27/2011
Attachments	ALTS003 Answer to Express Opposition.pdf (4 pages)(53333 bytes)

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

In the matter of Trademark Application Serial No. 85/095,689
By EXP613, LLC for the mark EXP in International Class 3
Filed: July 29, 2010
Published in the *Official Gazette* on January 18, 2011

Express, LLC,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91199874
	§	
EXP613, LLC,	§	
	§	
Applicant.	§	

ANSWER TO NOTICE OF OPPOSITION

Applicant, EXP613, LLC ("Applicant"), hereby answers the Notice of Opposition of Express, LLC ("Opposer"). Applicant reserves the right to amend or supplement this Answer to the Notice of Opposition as appropriate.

1. With respect to paragraph 1, Applicant denies the allegations.

2. With respect to paragraph 2, Applicant denies the allegations.

3. With respect to paragraph 3, Applicant does not have information sufficient to admit or deny the allegations, but notes that Opposer filed an extension to file Statement of Use in Opposer's Trademark Application No. 77/366,608 for the EXPRESS mark in International Class 3, and Applicant therefore denies the allegations.

4. With respect to paragraph 4, Applicant denies the allegations that Opposer's EXPRESS marks have priority over Applicant's EXP mark. Applicant does not have information sufficient to admit or deny the other allegations in paragraph 4 and Applicant therefore denies the allegations.

5. With respect to paragraph 5, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

6. With respect to paragraph 6, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

7. With respect to paragraph 7, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

8. With respect to paragraph 8, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

9. With respect to paragraph 9, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

10. With respect to paragraph 10, Applicant admits that its adoption and use were without license, permission or authorization of Opposer, but denies the allegation to the extent that it implies or otherwise connotes that any license, permission or authorization was required.

11. With respect to paragraph 11, Applicant reasserts its responses to each previous paragraph.

12. With respect to paragraph 12, Applicant denies any Office Action was issued in Application Serial No. 85/095,689 for the EXP mark in International Class 3 ("Application") and denies that Opposer's Registration No. 1,539,267 for EXP & Design in International Class 25 was cited in the Application. Applicant admits that an Office Action citing Opposer's Registration No. 1, 539,267 was issued on the basis of a likelihood of confusion in Application Serial No. 77/286,020, which is a subject matter of Opposition No. 91,194,918. The cited registration was cancelled in 2009 for failure to file a Section 8 Affidavit attesting to continued use. Applicant denies that the EXP & Design mark filed under Serial No. 77/733,938 is identical

to the design mark of the registration cancelled for failure to file a Section 8 Affidavit attesting to continued use (Reg. No. 1,539,267). Applicant denies that its EXP application is an abbreviation of Opposer's EXRESS mark. Applicant does not have information sufficient to admit or deny the remaining allegations and Applicant therefore denies the allegations.

13. With respect to paragraph 13, Applicant denies that "[t]here are no restrictions on Applicant's Goods" is vague and ambiguous and therefore Applicant does not have information sufficient to admit or deny the allegation and accordingly, denies the allegations. Applicant admits that there are no restrictions on the trade channels through which its goods may be sold. Applicant does not have information sufficient to admit or deny the other allegations of paragraph 13 and Applicant therefore denies the allegations.

14. With respect to paragraph 14, Applicant denies the allegations.

15. With respect to paragraph 15, Applicant reasserts its responses to each previous paragraph.

16. With respect to paragraph 16, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

17. With respect to paragraph 17, Applicant does not have information sufficient to admit or deny the allegations and Applicant therefore denies the allegations.

18. With respect to paragraph 18, Applicant denies the allegations.

To the extent that Applicant has not admitted or denied any other allegation contained in Opposer's Notice of Opposition, all such allegations are hereby denied by Applicant.

AFFIRMATIVE DEFENSE

The facts set forth in Opposer's Notice of Opposition are insufficient to state a claim or to support an opposition to Applicant's Application Serial No. 85/095,689.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed, that judgment be entered in Applicant's favor, and that Applicant's application for the EXP mark proceed to allowance.

Dated: June 27, 2011

Respectfully submitted,

IM IP LAW PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was sent by United States First Class Mail, Postage Prepaid, on June 27, 2011 to:

Frank J. Colucci, Esq.
Colucci & Umans
218 East 50th Street
New York, NY 10022

C. Andrew Im