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

Proceeding	91204097
Party	Defendant Van Gorden, Michael D
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Submission	Answer
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Date	03/31/2012
Attachments	USPTO TrademarkOppositionAnswer.pdf ( 4 pages )(107785 bytes )

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

In the Matter of Trademark Application Serial No. 85/400,638  
Published in the *Official Gazette* January 17, 2012

TWINS ENTERPRISE, INC.	)	
	)	
Opposer,	)	Opposition No.
	)	
v.	)	91204097
	)	
MICHAEL D. VAN GORDEN	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S ANSWER  
TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

Applicant, Michael D. Van Gorden (“ONE47”), for its answer to the Notice of Opposition filed by Twins Enterprise, Inc. (“Opposer”) against application for registration of Michael D. Van Gordens’ trademark ONE47, Serial No. 85/400,638 filed August 17, 2011, and published in the Official Gazette of January 17, 2012 (the “ONE47 Mark”), pleads and avers as follows:

1. Answering ¶ 1 of the Notice of Opposition, Applicant admits that he is an individual residing at 1467 Pebble Beach Drive, South Lake Tahoe, California 96150.
2. Answering ¶ 2 of the Notice of Opposition, Applicant Admits the he seeks registration for the mark ONE47 for use in connection with “bandanas; belts; blouses; gloves; hats; jackets; jeans; pants; sandals; shoes; short-sleeved shirts; shorts; socks; sweatshirts; sweaters; sweatpants; swimwear; t-shirts; tank tops; wristbands” in Class 25, but otherwise denies not yet using the ONE47 mark in Commerce in connection with the goods listed in his application.

3. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 3.
4.
  - a. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 4a.
  - b. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 3b.
  - c. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 3c.
5. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 5.
6. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 6.
7. Answering ¶ 7 of the Notice of Opposition, Applicant Admits that some of the goods included in his application are similar and/or related to that of the goods described in the Opposers' applications for the 47 Marks, and is offered to the same class of consumers, but otherwise denies each and every allegation contained therein.
8. Applicant denies each and every allegation contained in ¶ 8.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Opposer fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

As a result of the Applicant's continuous use of the "ONE47" Mark since the time of Applicant's adoption thereof, the Mark has developed goodwill among the consuming public and significant consumer acceptance of some of the goods offered by Applicant in conjunction with

the Mark. Such widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of the Applicant.

#### **Third Affirmative Defense**

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark of Opposer are not confusingly similar.

#### **Fourth Affirmative Defense**

Alternatively, any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of the letter's, words and/or design "47, FORTY SEVEN, and 47 (plus design)," which is not distinctive. As a result, under the antidissection rule any secondary meaning Opposer may have in its alleged 47 U.S trademark Applications is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the letter "47," and the word "FORTY SEVEN."

#### **Fifth Affirmative Defense**

Opposer's rights in and to the portion of its alleged 47, FORTY-SEVEN, and 47 (plus design) are generic or, in the alternative, merely descriptive of the goods offered under the mark. Opposer's alleged mark is therefore inherently unprotectable absent acquired distinctiveness, which the alleged 47 mark lacks.

#### **Sixth Affirmative Defense**

Applicant has been using the Mark and developing consumer recognition and goodwill therein since at least August 17, 2011, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, on which inaction Applicant has relied to its detriment. Opposer's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

WHEREFORE, Applicant prays as follows:

- a. this opposition be dismissed;
- b. a registration for the Mark ONE47 is issued to the Applicant

Dated: March 30, 2012

Respectfully Submitted,

By Defendant,

/Michael D. Van Gorden/  
Michael D. Van Gorden  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing ANSWER, AFFIRMATIVE DEFENSES was served in the following manner, by certified mail and via email to: SUNSTEIN KANN MURPHY & TIMBERS LLP, 125 Summer Street, Boston, Massachusetts 02110-1618 and by email at [nsmith@sunsteinlaw.com](mailto:nsmith@sunsteinlaw.com)

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 30<sup>th</sup> day of March, 2012

By:   
Michael D. Van Gorden

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