

ESTTA Tracking number: **ESTTA468503**

Filing date: **04/23/2012**

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

Proceeding	91204382
Party	Defendant Gaming Support B.V.
Correspondence Address	RICHARD H NEWMAN HOWARD & HOWARD 450 W 4TH ST ROYAL OAK, MI 48067-2557  ipdocket@h2law.com
Submission	Answer
Filer's Name	Melanie T. Frazier
Filer's e-mail	ipdocket@h2law.com
Signature	/Melanie T. Frazier/
Date	04/23/2012
Attachments	Applicant_s_Answer_to_Opposition_and_Affirmative_Defenses.pdf ( 5 pages ) (34692 bytes )

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

<b>Lower Sioux Indian Community in</b>	)	<b>Opposition No. 91204382</b>
<b>Minnesota, a Federally Recognized Indian</b>	)	
<b>Tribe,</b>	)	<b>For the mark: JACKPOTJUNCTION</b>
	)	
<b>Opposer,</b>	)	<b>Serial No. 85/484,395</b>
	)	
<b>Vs.</b>	)	<b>Published March 6, 2012 in the Official</b>
	)	<b>Gazette</b>
<b>Gaming Support, B.V. Corporation,</b>	)	
	)	
<b>Applicant.</b>	)	

---

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

Applicant Gaming Support, B.V. (“Applicant”), a corporation, through its attorneys Howard & Howard Attorneys PLLC, hereby responds to the Lower Sioux Indian Community in Minnesota (“Opposer”) regarding the Notice of Opposition filed regarding the mark JACKPOTJUNCTION (“Applicant’s Mark”), shown in Application Serial No. 85/484,395 published in the Official Gazette on March 6, 2012, and answers the Opposition as follows:

1. In answer to paragraph 1, Applicant admits that Opposer is a federally-recognized Indian Tribe that has the address at Route 1, Box 308, Morton, MN 56270. Applicant also admits that Opposer has used the mark JACKPOT JUNCTION in connection with services related to one casino and hotel located in Minnesota since 1984. Applicant denies that Opposer has used the mark JACKPOT JUNCTION on a wide variety of casino-related services.

2. In answer to paragraph 2, Applicant admits same.

3. In answer to paragraph 3, Applicant states that the Application speaks for itself and Applicant admits to the first dates of use and the first date of use in interstate commerce as set forth in the Application.

4. In answer to paragraph 4, Applicant admits the allegations only insofar as Opposer has used the mark JACKPOT JUNCTION in connection with services related to one casino located in Minnesota. Applicant denies all remaining allegations as factually and legally untrue.

5. In answer to paragraph 5, Applicant can neither admit nor deny the remaining allegations as Applicant is without sufficient knowledge.

6. In answer to paragraph 6, Applicant can neither admit nor deny the remaining allegations as Applicant is without sufficient knowledge.

7. In answering paragraph 7, Applicant can neither admit nor deny the allegations as Applicant does not have sufficient knowledge.

8. Answering paragraph 8, Applicant can neither admit nor deny the allegations as Applicant does not have sufficient knowledge.

9. In answer to paragraph 9, Applicant denies the allegations as factually and legally untrue.

#### **AFFIRMATIVE DEFENSES**

Opposer will please take note that Applicant will rely on the following Affirmative Defenses:

1. Registration of Applicant's mark will not result in any likelihood of confusion with Opposer's mark/registration.

2. Applicant's JACKPOTJUNCTION mark does not create any likelihood of confusion with Opposer's mark as Applicant's goods are distinctly different from Opposer's services and related to computer software and hardware which are sold in completely different channels of trade to completely different consumers in completely different markets from Opposer's services.

3. Applicant's JACKPOTJUNCTION mark does not create any likelihood of confusion with Opposer's mark as Applicant's goods are sold to sophisticated purchasers, and/or Opposer's mark is not famous.

4. The goods sold under Applicant's JACKPOTJUNCTION mark are sold to a limited specialty market; thus, there will be no likelihood of confusion.

5. Opposer has not alleged any instances of actual or even likely confusion by customers or the public at-large.

6. There has been concurrent use of Applicant's mark and Opposer's mark in the United States for a significant length of time, *i.e.*, more than seven (7) years.

7. Applicant has priority of use of the mark on an international basis.

8. Opposer's mark is descriptive and weak when considered in connection with the services, and therefore entitled to limited protections.

9. Opposer's claim is barred by the doctrine of laches.

10. Opposer's claim is barred by acquiescence.

11. Opposer's claim is barred by the doctrine of estoppel.

12. Applicant reserves the right to file additional Affirmative Defenses in this matter until it has had the opportunity to complete discovery, which opportunity it has not had in the time required to file an Answer in this cause.

**WHEREFORE,** Applicant requests that this Opposition be dismissed and that Applicant's mark is permitted registration.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: April 23, 2012

By: /Melanie T. Frazier/  
Melanie T. Frazier (MI #P39167)  
Richard Newman (NV #9943)  
Attorneys for Applicant  
450 West Fourth Street  
Royal Oak, MI 48067-2557  
(248) 723-0319  
(248) 645-1568 (facsimile)

**CERTIFICATE OF SERVICE**

**THE UNDERSIGNED** hereby certifies that on this 23rd day of April, 2012, she caused to be served a true and accurate copy of the foregoing *Applicant's Answer to Opposition and Affirmative Defenses* upon Opposer, by causing a copy thereof to be delivered to Opposer's listed correspondents, by regular mail to the following address:

Joseph F. Halloran  
Eric O. Haugen  
Jacobson, Buffalo, Magnuson, Anderson & Hogen  
335 Atrium Office Building  
1295 Bandana Boulevard  
Saint Paul, Minnesota 55108

HOWARD & HOWARD ATTORNEYS PLLC

By: /Melanie T. Frazier/  
Melanie T. Frazier