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Filing date: **03/01/2013**

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

Proceeding	91204473
Party	Defendant Edmund Frette S.A.R.L.
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Submission	Answer and Counterclaim
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Date	03/01/2013
Attachments	91204473-Answer and Counterclaim.pdf (9 pages)(24242 bytes)

Registration Subject to the filing

Registration No	4276293	Registration date	01/15/2013
Registrant	PICKIN' COTTON COMMUNICATIONS, LLC 232 IVORY STREET LAFAYETTE, LA 70506 UNITED STATES		

Goods/Services Subject to the filing

<p>Class 025. First Use: 2010/12/30 First Use In Commerce: 2012/11/03 All goods and services in the class are requested, namely: Adult novelty gag clothing item, namely, socks; baby layettes for clothing; belts; belts for clothing; belts made out of cloth; bibs not of cloth or paper; bottoms; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth bibs for adult diners; cloth bibs for use by senior citizens or physically- or mentally-challenged persons; cloth diapers; clothing extension used to extend the normal size range of clothing items to accommodate pregnancy size changes; clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; clothing for athletic use, namely, padded pants; clothing for athletic use, namely, padded shirts; clothing for athletic use, namely, padded shorts; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; clothing for wear in judo practices; clothing for wear in wrestling games; clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; clothing, namely, arm warmers; clothing, namely, athletic sleeves; clothing, namely, base layers; clothing, namely, folk costumes; clothing, namely, hand-warmers; clothing, namely, khakis; clothing, namely, knee warmers; clothing, namely, maternity bands; clothing, namely, neck tubes; clothing, namely, thobes; clothing, namely, wrap-arounds; corsets; dusters; eyeshades; foulards; gloves as clothing; headbands for clothing; hoods; infant and toddler one piece clothing; infant cloth diapers; inserts specially adapted for cloth diapers made of bamboo; inserts specially adapted for cloth diapers made of hemp; inserts specially adapted for cloth diapers made of microfiber; jackets; jerseys; leather belts; mantles; mufflers; non-disposable cloth training</p>
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pants; paper hats for use as clothing items; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; pocket squares; shifts; short sets; shoulder wraps; shoulder wraps for clothing; swaddling clothes; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps

5. For Paragraph 5, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 5, leaving Opposer to strict proof thereof.

6. For Paragraph 6, Applicant denies the allegation of Paragraph 6, leaving Opposer to strict proof thereof.

7. For Paragraph 7, Applicant denies the allegations of Paragraph 7, leaving Opposer to strict proof thereof.

8. For Paragraph 8, Applicant is without knowledge of Opposer's specific "goods and Services" in connection with any of Opposer's pleaded marks, and/or a "natural zone of expansion" therefor, and/or Opposer's "channels of trade" therefor, and/or Opposer's "class of purchasers" therefor. Based thereon, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 8, leaving Opposer to strict proof thereof.

9. For Paragraph 9, Applicant denies the allegations of Paragraph 9, leaving Opposer to strict proof thereof.

10. For Paragraph 10, Applicant denies the allegations of Paragraph 10, leaving Opposer to strict proof thereof.

11. For paragraph 11, Applicant is without knowledge of Opposer's specific "other goods," and/or Opposer's "uses or plans to use" various alleged marks. Based thereon, Applicant is without sufficient knowledge to form a belief as to the allegations of Paragraph 11, leaving Opposer to strict proof thereof.

12. For paragraph 12, Applicant denies the allegations of Paragraph 12, leaving Opposer to strict proof thereof.

13. For paragraph 13, Applicant denies the allegations of Paragraph 13, leaving Opposer to strict proof thereof.

14. For Paragraph 14, Applicant repeats and reasserts its Answers to Opposer's Paragraphs 1 through 13.

15. For Paragraph 15, Applicant denies the allegations of Paragraph 15, leaving Opposer to strict proof thereof.

16. For Paragraph 16, Applicant denies the allegations of Paragraph 16, leaving Opposer to strict proof thereof.

17. For Paragraph 17, Applicant denies the allegations of Paragraph 17, leaving Opposer to strict proof thereof.

18. Regarding the closing paragraph, Applicant denies that Opposer is entitled to the relief requested therein.

AFFIRMATIVE DEFENSES

1. Opposer's Notice of Opposition should be limited to Opposer's Application Serial No. 85/207,681 for the mark FRATTY. Applicant's Application Serial No. 79/103,520 is based on the Madrid Protocol under Section 66 of the Trademark Act, 15 USC §1141f. Opposer filed the Notice of Opposition through ESTTA. In the ESTTA form utilized in Opposer's filing of its Notice of Opposition, Opposer asserted only one application/registration, specifically Application Serial No. 85/207,681 for the mark FRATTY. Although Opposer asserts other applications for other marks within the pleading attached to Opposer's ESTTA form, presumably the U.S. Patent and Trademark Office's ("USPTO") electronic notification to the International Bureau included only information on Opposer's FRATTY application. Therefore, the opposition is limited to the FRATTY application identified on the ESTTA electronic form, and all other applications included by Opposer within its pleading attached to its ESTTA electronic form should be excluded from consideration.

COUNTERCLAIM

1. On or about December 30, 2010, Opposer filed Application Serial No. 85/207,681 with the USPTO for the mark FRATTY, asserting Opposer's *bona fide* intention to use the mark in commerce on the identified goods, and supported by Opposer's Declaration signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEOs".

2. The USPTO issued a Notice of Allowance for Opposer's Application No. 85/207,681 on May 8, 2012 for all goods identified in the application.

3. On November 3, 2012 Opposer filed with the USPTO a Statement of Use asserting a date of first use of December 30, 2010 and a date of first use in commerce of November 3, 2012 in its FRATTY application, stating "The specimen consist [sic] of two pictures of t-shirts," including Opposer's signed Declaration in support thereof.

4. In Opposer's November 3, 2012 Statement of Use, Opposer listed the identification of goods as applied for on December 30, 2010, and Opposer specifically stated "Keep All Listed" goods, supported by Opposer's Declaration signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEOs".

5. Opposer's Application Serial No. 85/207,681 issued on January 15, 2013 as Registration No. 4,276,293 for the following goods: "Adult novelty gag clothing item, namely, socks; baby layettes for clothing; belts; belts for clothing; belts made out of cloth; bibs not of cloth or paper; bottoms; children's and infants' cloth bibs; children's cloth eating bibs; cloth bibs; cloth bibs for adult diners; cloth bibs for use by senior citizens or physically- or mentally-challenged persons; cloth diapers; clothing extension used to extend the normal size range of clothing items to accommodate pregnancy size changes; clothing for athletic use, namely, padded elbow compression sleeves being part of an athletic garment; clothing for athletic use,

namely, padded pants; clothing for athletic use, namely, padded shirts; clothing for athletic use, namely, padded shorts; clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; clothing for wear in judo practices; clothing for wear in wrestling games; clothing items, namely, adhesive pockets that may be affixed directly to the body as a decorative piece of clothing with utility; clothing items, namely, adhesive pockets that may be affixed directly to the inside of clothing for storage and safekeeping of personal items; clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; clothing, namely, arm warmers; clothing, namely, athletic sleeves; clothing, namely, base layers; clothing, namely, folk costumes; clothing, namely, hand-warmers; clothing, namely, khakis; clothing, namely, knee warmers; clothing, namely, maternity bands; clothing, namely, neck tubes; clothing, namely, thobes; clothing, namely, wrap-arounds; corsets; dusters; eyeshades; foulards; gloves as clothing; headbands for clothing; hoods; infant and toddler one piece clothing; infant cloth diapers; inserts specially adapted for cloth diapers made of bamboo; inserts specially adapted for cloth diapers made of hemp; inserts specially adapted for cloth diapers made of microfiber; jackets; jerseys; leather belts; mantles; mufflers; non-disposable cloth training pants; paper hats for use as clothing items; parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; pocket squares; shifts; short sets; shoulder wraps; shoulder wraps for clothing; swaddling clothes; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps.”

6. Upon information and belief, Opposer's averment of a *bona fide* intention to use the mark FRATTY on or in connection with every good recited in the application filed on or about December 30, 2010 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Opposer a registration; and reasonably relying on the truth of Opposer's material false averment, the USPTO issued Registration No. 4,276,293 to Opposer.

7. Upon information and belief, Opposer's averment of use of the mark FRATTY on or in connection with every good recited in Opposer's Statement of Use filed November 3, 2012 was made with knowledge and belief that said averment was false. Said material false averment was made with the intent to induce employees of the USPTO to grant Opposer a registration; and reasonably relying on the truth of Opposer's material false averment, the USPTO issued Registration No. 4,276,293 to Opposer.

8. Upon information and belief, Opposer did not have a *bona fide* intention to use the mark FRATTY on or in connection with every good recited in its application filed on or about December 30, 2012.

9. Upon information and belief, Opposer is not now using, and has never used, the mark FRATTY on or in connection with every good recited in Opposer's November 3, 2012 Statement of Use.

10. Applicant avers that, upon information and belief, Opposer's Registration No. 4,276,293 was obtained fraudulently in that Opposer's FRATTY application and Opposer's Statement of Use as filed by Opposer with the USPTO under notice of Section 1001 of Title 18 of the United States Code and signed by Alfonzo D. Bolden and Troy A. Bolden as "CO-CEO's" contained known false material statements.

11. Upon information and belief, Applicant alleges that Opposer has not used the mark on or in connection with every good recited in the November 3, 2012 Statement of Use. Therefore, Opposer's registration should be cancelled based on non-use of the mark under Section 1(a) of the Trademark Act, 15 USC §1052(a).

12. Applicant avers that it is damaged by the continued existence of Opposer's Registration No. 4,276,293.

Applicant, Edmund Frette S.A.R.L., reserves the right to assert other affirmative defense(s) or further compulsory or permissive counterclaim(s), if warranted by information obtained through discovery or trial.

WHEREFORE, Edmund Frette S.A.R.L. prays that its Counterclaim Petition to Cancel be granted; that Pickin' Cotton Communications, LLC's Registration No. 4,276,293 be cancelled; that Pickin' Cotton Communications, LLC's Notice of Opposition against Application Serial No. 79/103,520 be dismissed; and that Edmund Frette S.A.R.L.'s Application Serial No. 79/103,520 be forwarded for issuance as a registration.

Applicant has previously appointed Jeffrey H. Kaufman, Esquire, and the following attorneys of the firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., as its attorneys with full powers of substitution and revocation and to transact all business in the United States Patent and Trademark Office in connection with the Notice of Opposition.

Norman F. Oblon
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Members of the Bar of Virginia (except as indicated)

*Member of the Bar other than Virginia

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES AND COUNTERCLAIM was served on Opposer at Opposer's correspondence address in the records of the USPTO, this 1st day of March, 2013, by sending same via First Class mail, postage prepaid, to:

Matt Fogarty, MD
Pickin' Cotton Communications, LLC
232 Ivory Street
Lafayette, LA 70506

/carlette lisenby/
Carlette Lisenby