

ESTTA Tracking number: **ESTTA521624**

Filing date: **02/14/2013**

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

Proceeding	91205048
Party	Defendant Danny K. Choi & Melinda A. Choi
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Submission	Answer
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Signature	/Stephen Z. Vegh/
Date	02/14/2013
Attachments	[02 14 13] First Amended Answer.pdf ( 7 pages )(154829 bytes )

Case: BESTM-007M

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN RE SERIAL NO. 85/451,415**

Habitat for Humanity International, Inc.,	)	Opposition No.: 91205048
	)	
Opposer,	)	
	)	
vs.	)	
	)	
Danny K. Choi, and Melinda A. Choi,	)	
	)	
Applicants.	)	
_____	)	

**APPLICANTS' FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION**

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

Applicants, Danny K. Choi and Melinda A. Choi (hereinafter "Applicants"), hereby answer each and every allegation recited in the above-captioned Notice of Opposition as follows:

1. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore deny the same.
2. Applicants are without knowledge or information sufficient for form a belief as to the truth of the allegations of Paragraph 2 and therefore deny the same.
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore deny the same.

4. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore deny the same.

5. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore deny the same.

6. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefore deny the same.

7. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore deny the same.

8. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore deny the same.

9. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefore deny the same.

10. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefore deny the same.

11. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and therefore deny the same.

12. Applicants admit the allegations of Paragraph 12.

13. Applicants deny the allegations of Paragraph 13.

14. Applicants deny the allegations of Paragraph 14.

15. Applicants admit that their mark SWIPEFORHUMANITY is for financial services to initiate support to charity programs, but otherwise deny the remaining allegations in Paragraph 15.

16. Applicants deny the allegations of Paragraph 16.
17. Applicants deny the allegations of Paragraph 17.
18. Applicants deny the allegations of Paragraph 18.

### **AFFIRMATIVE DEFENSES**

Applicants set forth below their affirmative defenses. By setting forth these affirmative defenses, Applicants do not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Opposer. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Opposer's allegations.

1. Opposer's claims are precluded by the doctrines of Estoppel and Acquiescence. At least thirty (30) third-party registrations have issued for charitable or fundraising services in the Trademark Office for marks containing the terms: "for Humanity", twenty-two (22) of which are currently active. Opposer did not oppose most of these applications (TESS records of which are attached hereto as Exhibit A). Opposer has thereby acquiesced to the crowded marketplace that is the use of "for Humanity" derivative marks or services related to charity and fundraising. Opposer, by its acquiescence, led the general public, including Applicant, into believing that Opposer did not intend to prevent others from obtaining a trademark registration containing the terms "for Humanity" for use on charitable and fundraising services. Opposer is therefore estopped from now asserting that Applicant's registration should be denied.

2. Opposer will not be damaged by registration of Applicants' Mark.

3. Opposer is barred, in whole or in part, from relief by the Doctrine of Unclean Hands. Opposer failed to disclose the use of the words “for Humanity” by others in connection with charitable or fundraising services, or substantially identical services during the prosecution of its “Habitat for Humanity” applications. Such uses would have been material to the procurement of the “Habitat for Humanity” registrations because they included the terms “for Humanity”, were for or related to charitable or fundraising services, and are so many in number as to support a finding that Opposer’s mark is generic for charitable or fundraising services providing assistance with homebuilding activities. Opposer was aware of the existence of these marks and further knew that their use supported a finding that the terms “Habitat for Humanity” are generic for services related to charitable giving and/or fundraising with homebuilding activities. As such, Opposer knew that its “Habitat for Humanity” trademarks were likely to be found generic for charities and fundraising services providing assistance with homebuilding activities if such marks were disclosed to the Trademark Office. Opposer intentionally failed to disclose the generic use of other “for Humanity” marks because it wanted to narrow the trademark examiner’s scope of reviews of the “Habitat for Humanity” trademark applications, and by extension avoid the Trademark Office’s evaluation of the generic character of Opposer’s marks. By failing to disclose these facts to the Trademark Office, Opposer intended to procure the “Habitat for Humanity” trademark applications to which it was not otherwise entitled.

4. Applicants allege that their conduct was at all times lawful, privileged, justified, reasonable, and in good faith, based upon the relevant facts known at the time they acted.

5. Opposer's claims are barred, in whole or in part, since there is no likelihood of confusion in the marketplace.

6. Opposer's claims are barred by the Doctrine of Fraud on the United States Patent and Trademark Office. Opposer failed to disclose the use of the words "for Humanity" by others in connection with charitable or fundraising services, or substantially identical services during the prosecution of its "Habitat for Humanity" applications. Such uses would have been material to the procurement of the "Habitat for Humanity" registrations because they included the terms "for Humanity", were for or related to charitable or fundraising services, and are so many in number as to support a finding that Opposer's mark is generic for charitable or fundraising services providing assistance with homebuilding activities. Opposer was aware of the existence of these marks and further knew that their use supported a finding that the terms "Habitat for Humanity" are generic for services related to charitable giving and/or fundraising with homebuilding activities. As such, Opposer knew that its "Habitat for Humanity" trademarks were likely to be found generic for charities and fundraising services providing assistance with homebuilding activities if such marks were disclosed to the Trademark Office. Opposer intentionally failed to disclose the generic use of other "for Humanity" marks because it wanted to narrow the trademark examiner's scope of reviews of the "Habitat for Humanity" trademark applications, and by extension avoid the Trademark Office's evaluation of the generic character of Opposer's marks. By failing to disclose these facts to the Trademark Office, Opposer intended to procure the "Habitat for Humanity" trademark applications to which it was not otherwise entitled.

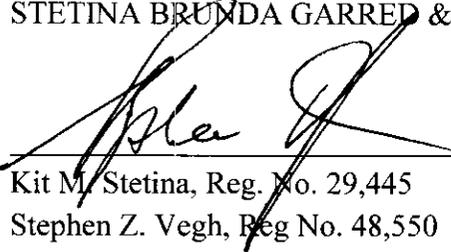
7. Opposer's trademark registration Nos. 2,169,719, 3,340,897, 3,370,179, 3,694,958, 3,997,452 and 4,058,878 are invalid because the term "Habitat for Humanity" has become generic.

WHEREFORE, Applicants pray that this opposition to Applicant Serial No. 85/451,415 be denied and that registration for its mark SWIPEFORHUMANITY be granted.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: 2-14-13



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(949) 855-1246  
Counsel for Applicant

**PROOF OF SERVICE**

State of California    )  
                                  ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **February 14, 2013**, the attached **APPLICANT'S FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Samantha L. Hayes  
Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309

William M. Bryner  
Kilpatrick Townsend & Stockton LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101

Executed on **February 14, 2013** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Ellen Burns