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

Proceeding	91205075
Party	Defendant Elmashni, Ghassan, Elmashni, Hatim, Giokaris, Jimmy
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Attachments	Answer to Opposition (Serial No. 85363770).pdf (4 pages)(389609 bytes)

Serial No. 85363770

Opposition No. 91205075

ANSWER TO THE OPPOSITION WITH AFFIRMATIVE DEFENSES

Applicants, Jimmy Giokaris, Hatim Elmashni, and Ghassan Elmashni, otherwise known as EdTree, Inc., hereby submit their Answer to the Notice of Opposition files by Opposer, Learning Tree International, Inc., with the following numbered Paragraphs corresponding to the numbers of the Paragraphs of the Notice of Opposition under the headings used in the Notice of Opposition:

1. Applicants admit that Opposer has provided both live and on-line education services since 1974.
2. Applicants admit that Opposer offers its services to those who seek to learn new skills. Applicants also admit the remainder of Paragraph 2 to be accurate.
3. Applicants admit that the Opposer's courses qualify for college credit.
4. Applicants admit that Opposer advertises its services using the methods mentioned in Paragraph 4.
5. Applicants admit that Opposer is the owner of U.S. Registration Nos. 1124714, 1474553, 1506875, 2424259, 2424262, 2424260, 2424261, 2424263, 2424264, 2337136, 3829287, and 3694171 in the U.S. Patent and Trademark Office. Applicants also admit the remainder of Paragraph 5 to be accurate.
6. Applicants admit that Opposer is using its trademarks in connection with its goods and services and has been doing so long before July 6, 2011.
7. Applicants admit that Opposer's trademarks symbolize all that is mentioned in Paragraph 7 and also admit the remainder of Paragraph 7 to be accurate.
8. Applicants admit that they seek to register the trademark EDTREE for the reasons mentioned in Paragraph 8.
9. Applicants admit that the application to register Applicants' trademark was filed on July 6, 2011 with the U.S. Patent and Trademark Office and was given the serial No. 85363770. Applicants also admit the remainder of Paragraph 9 to be accurate.

10. Applicants admit that Opposer has been using its trademarks in commerce in connection with its goods and services long prior to the filing date of Applicants' application.
11. Applicants admit that the terms "educational" and "learning" are related in meaning and that the arbitrary term "tree" is included in both the Applicants' and Opposer's trademarks. Applicants also admit that the trademark EDTREE includes the syllable "ED" which is a common formative for "education". However, Applicant denies that Applicants' trademark will cause confusion and mistake in the minds of purchasers of Opposer's goods and services.
12. Applicants deny that their trademark falsely suggests a connection between Opposer and Applicant. Applicants also deny that their trademark will cause consumers to draw false conclusions about the nature or quality of Applicants' services under circumstances where such a conclusion will be material to the purchasers of Opposer's goods and services.
13. Applicants admit that the goodwill of Opposer's business under its trademarks is of substantial value. However, Applicants deny that Opposer will suffer irreparable harm should Applicants be permitted to use and register Applicants' trademarks and services.
14. Applicants deny that the Applicants' trademark and the Opposer's trademark will cause any confusion that could result in damage and injury to Opposer.
15. Applicants deny that registration of Applicants' trademark will impede Opposer's ability to register, maintain, and enforce its trademarks for its goods and services.

FIRST AFFIRMATIVE DEFENSE

As and for a First Affirmative Defense, Applicants states that the Opposer's good and services is not even remotely close to the services EdTree, Inc. is offering. If one takes a close look at edtree.com, it is apparent that the service EdTree is offering is simply a social network for those who wish to better themselves and for those who want to help such people better themselves. EdTree's purpose is to allow instructors in a broad range of disciplines (subject tutoring, test prep, athletics, arts, languages, and religions) to create profiles which will allow them to market their services and expertise in a particular field. Prospective students could then search for instructors who meet their needs like location, experience, and hourly rate. Opposer's goods and services do not include the type of social media platform that EdTree has developed. Opposer's services is to provide live and online courses for those who wish to pursue studies in fields such as management, information technology, computer and hardware engineering, and communication skills. Nowhere on edtree.com is there an option for an instructor to offer such services and Applicants have no desire to allow potential instructors to offer such services since the primary target is high school aged students.

SECOND AFFIRMATIVE DEFENSE

The irony of the Opposer's opposition to the Applicants' trademark is that edtree.com could actually help the Opposer's business since Opposer can advertise its services to particular users on edtree.com in order to drive business to learningtree.com. EdTree, Inc.'s business model is to generate enough traffic with its social media platform that there will be valuable user data for other companies involved in education to market their services to particular users. For example, a yoga studio could purchase advertising space on users' pages who state yoga as an interest of theirs or those who seek a yoga instructor. Should a student on edtree.com seek services similar to the good and services the Opposer offers, the Opposer could generate more business for itself by marketing their services to that student by forging a conducive and collegial business relationship with the Applicants instead of opposing their trademark due to an unfounded fear that the Applicants' trademark will hurt the Opposer's business.

THIRD AFFIRMATIVE DEFENSE

The words "learning", "educational", and "tree" are so diluted even with regard to online education that no single entity should have exclusive rights to those words, especially when not used with regard to online education but with regard to a social media platform. See, for example, the following registrations of trademarks including the word "learning" for online education. Word mark and registration numbers are listed below.

4157166	L JEWISH LEARNING VENTURE
4156464	ALL ABOUT KIDS A GREEN CHILDCARE AND LEARNING CENTER
4159268	LIVER LEARNING
3977302	ONE ON ONE LEARNING
4158305	SMART LOVE OF LEARNING
4153074	MERIDIUM QUICK COURSE E-LEARNING PRODUCTS E
4152965	POWER LEARNING
4154752	LEARNINGELITE
4089263	LEARNING OUTLET
4150108	CTE LEARNING THAT WORKS FOR AMERICA
4149698	MANY UNIQUE LEARNING TENDENCIES INFLUENCE TEACHING
4100433	THE TATTOO LEARNING CENTER
4149184	JUNIOR LEARNING
4151154	LEARNING HAPPENS EVERYWHERE

WHEREFORE, Applicants respectfully request that the Notice of Opposition be rejected and that Applicants' trademark be allowed to proceed to registration.

Respectfully submitted,

By: 

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Applicant, Founder of EdTree, Inc., and

Representative of Applicants and Founders

Hatim Elmashni and Jimmy Giokaris

Certificate of Service

I hereby certify that a true copy of the above and foregoing Answer to the Opposition with Affirmative Defenses was served on Theodore D. Lienesch, Opposer's attorney of record, by First Class Mail to Thompson Hine LLP, 10050 Innovation Drive, Suite 400, Dayton, OH 45342-4934 on this 18th day of June, 2012.

By: 

Ghassan Elmashni