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

Proceeding	91206144
Party	Defendant Fonality, Inc.
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Submission	Answer
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Date	08/27/2012
Attachments	Answer to Notice of Opposition.pdf (6 pages)(251578 bytes)

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

In the Matter of Trademark
Application Serial Nos. 85/249,167; 85/249,160; 85/976,151; and, 85/976,108
Published in the Official Gazette
March 20, 2012

FON WIRELESS LIMITED, Opposer, v. FONALITY, Inc., Applicant.	Opposition No.:91206144

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Fonality, Inc. ("Applicant"), for its answer to the Notice of Opposition (the "Opposition") filed by Fon Wireless limitted ("Opposer") against application for registration of Application Serial Nos. 85/249,167; 85/249,160; 85/976,151; and, 85/976,108 for the mark FON in International Classes 9, 38, 41 and 42 and the mark FON plus design in International Classes 9, 38, 41 and 42 (the "Mark"), pleads and avers as follows:

1. Answering Paragraph 1 of the Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein Paragraph 1 and accordingly denies the allegations.

2. Answering Paragraph 2 of the Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein Paragraph 1 and accordingly denies the allegations.

3. Answering Paragraph 3 of the Opposition, Applicant admits that Exhibit 1 appears to be copies of U.S. Trademark Registration Certificates with Nos. 3,232,690; 3,232,691; and 3,392,074, which documents speak for themselves. Applicant does not have sufficient knowledge or information to form a belief as to the other allegations contained therein Paragraph 3 and accordingly denies the same.

4. Answering Paragraph 4 of the Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein Paragraph 4 and accordingly denies the allegations.

5. Answering Paragraph 5 of the Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein Paragraph 5 and accordingly denies the allegations.

6. Answering Paragraph 6 of the Opposition, Applicant denies each and every allegation contained therein.

7. Answering Paragraph 7 of the Opposition, Applicant denies each and every allegation contained therein.

8. Answering Paragraph 8 of the Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSE

First Affirmative Defense

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

Second Affirmative Defense

The Examining Attorney assigned to examine the Mark has previously compared the Mark with Opposer's Registration Nos. 3,232,690/3,232,691 and approved the Mark for publication on the Principal Register. There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademarks of Opposer are not confusingly similar.

Third Affirmative Defense

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consume acceptance of the services offered by Applicant in conjunction with the Mark. Such good will and widespread usage has caused

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

Fourth Affirmative Defense

Applicant's continuous use of the Mark has been open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. 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.

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WHEREFORE, Applicant requests that this Opposition be dismissed.

Dated: August 27, 2012

Respectfully submitted,

Brian R. Coleman

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I, _____, an attorney for Applicant, hereby certify that a copy of the foregoing Answer is being served upon Ali R. Latifi, TUCKER & LATIFI, LLP, 160 East 87th Street, Suite 5E, New York, New York, 10028, this 27th day of August, 2012, by U.S. mail.

_____
Brian R. Coleman