

ESTTA Tracking number: **ESTTA541672**

Filing date: **06/04/2013**

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

Proceeding	91208639
Party	Defendant City of Deer Park, Texas
Correspondence Address	ROBB D EDMONDS EDMONDS & NOLTE PC 2625 BAY AREA BOULEVARD, SUITE 530 HOUSTON, TX 77058 UNITED STATES redmonds@edmondsnolte.com, jholman@edmondsnolte.com, docketing@edmondsnolte.com, correspondence@edmondsnolte.com, dbarberis@edmondsnolte.com
Submission	Answer
Filer's Name	Robb D. Edmonds
Filer's e-mail	redmonds@edmondsnolte.com
Signature	/Robb D. Edmonds/
Date	06/04/2013
Attachments	WALLY - 91208639 - ANSWER.pdf(97360 bytes)

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

Proceeding	91208639
Party	Defendant City of Deer Park, TX
Correspondence Address	Robb D. Edmonds Edmonds & Nolte PC 2625 Bay Area Blvd. Suite 530 Houston, TX 77058
Submission	Answer and Affirmative Defenses
Filer's Name	Robb D. Edmonds
Filer's e-mail	redmonds@edmondsnolte.com
Signature	/Robb D. Edmonds/
Date	06/04/13
Attachments	WALLY – 91208639 - ANSWER.pdf (4 pages)(90KB)

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

-----X
BOSTON RED SOX BASEBALL CLUB
LIMITED PARTNERSHIP,

Opposer,

OPPOSITION NO.: 91208639

v.

SERIAL NO.: 85350447

CITY OF DEER PARK, TEXAS

Applicant
-----X

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES

Applicant CITY OF DEER PARK, TX (“Applicant”), by its attorneys Edmonds & Nolte, P.C., for its Answer and Affirmative Defenses to the Notice of Opposition of Boston Red Sox Baseball Club Limited Partnership (“Opposer”), alleges on knowledge as to its own acts and otherwise on information and belief as follows:

1. Applicant has insufficient knowledge or information sufficient to form a belief concerning the allegations contained in paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Applicant has insufficient knowledge or information sufficient to form a belief concerning the allegations contained in paragraph 2 of the Notice of Opposition and, therefore, denies the same.

3. Applicant admits that a mark, Reg. No. 3,797,623, is registered with the U.S. Patent and Trademark Office in International class 25 listing Opposer as the owner. Applicant admits that a mark, Reg. No. 3,801,204, is registered with the U.S. Patent and Trademark Office in

International class 41 listing Opposer as the owner. Otherwise, Applicant has insufficient knowledge or information sufficient to form a belief concerning the allegations contained.

4. Applicant has insufficient knowledge or information sufficient to form a belief concerning the allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies the same.

5. Applicant has insufficient knowledge or information sufficient to form a belief concerning the allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies the same.

6. Applicant admits on June 20, 2011, Applicant filed the Application for Applicant's Mark for "Brochures, booklets, and teaching materials to instruct citizens and provided safety information regarding shelter in place and chemical release" in International Class 16, with a first use date of January 1, 1993.

7. Applicant denies the allegations contained in paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

10. As and for a first defense, the Notice of Opposition fails to state a claim upon which relief can be granted.

11. As and for a second defense, there is no likelihood of confusion between the alleged marks of the Opposer upon which Opposer bases this opposition as identified in the Notice of Opposition and Applicant's Mark.

12. As and for a third defense, Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

13. As and for a fourth defense, Applicant's mark is distinctively different from Opposer's design to avoid confusion, deception, or mistake as to the source or sponsorship or association of Applicant's goods.

14. As and for a fifth defense, Applicant's mark, when used in connection with Applicant's goods and services, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

15. As and for a sixth defense, the Notice of Opposition fails to state a claim entitling the Opposer to relief in that Applicant's WALLY and design and Opposer's alleged mark are so different in appearance, and present different commercial impressions.

There may be additional affirmative defenses to the opposition alleged by Opposer that are currently unknown to Applicant. Applicant hereby reserves the right to amend this Answer to allege additional affirmative defenses in the event discovery or other information indicates they are appropriate.

WHEREFORE, Applicant respectfully requests that judgment be entered in its favor, that Opposer's Notice of Opposition be dismissed with prejudice, that Applicant's WALLY and design mark be allowed to proceed to registration, and that Applicant be granted such additional and further relief as the Board deems equitable and just.

Dated: June 4, 2013

Respectfully submitted,

/Robb D. Edmonds/
Robb D. Edmonds
EDMONDS & NOLTE, P.C.
2625 Bay Area Blvd, Suite 530
Houston, Texas 77058
Phone: 281-480-2700
Facsimile: 281-480-2701

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that Applicant's ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* this 4th day of June, 2013.

/Robb D. Edmonds/
ROBB D. EDMONDS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was sent via email and USPS, First Class, on this 4th day of June, 2013, to the attorney for the Opposer at the following address:

Lisa M. Willis
Cowan, Liebowitz & Latman, P. C.
1133 Avenue of the Americas
New York, NY 10036
LMW@cll.com

/Robb D. Edmonds/
ROBB D. EDMONDS