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

Proceeding	91209647
Party	Defendant Middleburg Real Estate, LLC
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Submission	Answer
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No.: 85/629,450
For the Mark: ATOKA PROPERTIES

Jorge J. Carnicero,

Opposer,

v.

Opposition No. 91/209647

Middleburg Real Estate, LLC

Applicant.

ANSWER

The above-identified Applicant, Middleburg Real Estate, LLC, a Virginia limited liability company, by counsel, denies that Opposer, Jorge J. Carnicero (“Carnicero”), is and/or will be damaged by the registration of the mark shown in the Application for U.S. Trademark Registration referenced above, and hereby responds and answers the Notice of Opposition (“Opposition”) filed in this proceeding by Carnicero and admits, denies and alleges as follows:

Applicant admits that it is the owner of the Application for U.S. Trademark Registration Serial No. 85/629,450 for the Mark, referenced as ATOKA PROPERTIES, for the goods and services specified in that file wrapper and including services in International Class 36 specified as “real estate brokerage services and real property management services” (the “Application”). In further response, the Application by the Applicant was examined by the United States Patent and Trademark Office and

approved for publication and then issuance as a Federal Trademark Registration. Publication occurred in the Official Gazette on or about November 6, 2012. Applicant's application for registration and the file wrapper therein as a part of the evidence in this proceeding speak for themselves with regard to the information contained within them.

Furthermore, Applicant lacks sufficient information to admit or deny the factual allegations otherwise contained in the introductory paragraph of the Opposition. Similarly, Applicant lacks sufficient information, and will not be capable to ever receive sufficient information, to admit or deny the beliefs of the Opposer contained in the introductory paragraph of the Opposition. Other allegations contained in the introductory paragraph may be conclusions of law to which no answer is required. To the extent that an answer to any of these allegations, whether factual allegations, beliefs or legal conclusions, is deemed required, Applicant denies the allegations contained in the introductory paragraph to the Opposition.

Applicant, by counsel, hereby responds and answers the numbered paragraphs of the Opposition filed in this proceeding by Opposer and admits, denies and alleges as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Opposition and on that basis denies these allegations.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Opposition and on that basis denies these allegations.
3. Denied.

4. Denied.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Opposition and on that basis denies these allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Opposition and on that basis denies these allegations.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Opposition and on that basis denies these allegations.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Opposition and on that basis denies these allegations.

9. Denied.

10. Allegations of paragraph 10 are conclusions of law to which no answer is required. Allegations of fact of paragraph 10 are denied. To the extent that an answer to any of these allegations, whether beliefs or factual allegations or conclusions of law, is deemed required, Applicant denies the allegations contained in paragraph 10.

11. Admitted that Applicant is a limited liability company organized under the laws of the Commonwealth of Virginia with a registered address of 611 South 32nd Street, Purcellville, Virginia 20132 and that this address is in Loudoun County in the Commonwealth of Virginia. All other allegations of fact of paragraph 11 are denied. To the extent that any further answer to any of these allegations, whether factual

allegations or conclusions of law, is deemed required, Applicant denies the allegations contained in paragraph 11.

12. Applicant admits that Peter Pejacsevich is an Austrian citizen. All other allegations of fact of paragraph 12 are denied.

13. Applicant admits that Peter Pejacsevich is married to his wife who is a granddaughter of owners of former long-standing in property in Fauquier County in the Commonwealth of Virginia. All other allegations of fact of paragraph 13 are denied. Other allegations of paragraph 13 are conclusions of law to which no answer is required. To the extent that any further answer to any of these allegations, whether factual allegations or conclusions of law, is deemed required, Applicant denies the allegations contained in paragraph 13.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Allegations of fact of paragraph 18 are denied. Other allegations of paragraph 18 are conclusions of law or hypothetical facts to which no answer is required.

19. Allegations of fact of paragraph 19 are denied. Other allegations of paragraph 19 are conclusions of law or hypothetical facts to which no answer is required.

Applicant respectfully requests that this Court reject Opposer's Opposition as it makes no cognizable claim. To the extent that a request is to be assumed or a claim is

to be read as implied or existing, the Applicant requests that the Court act to reject any such request and dismiss any such claim and enter judgment for the Applicant and award it its costs and attorneys' fees, together with such other and further relief to which the Applicant may be justly entitled.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

The Opposer's claims are barred, in whole or in part, by the lack of sufficient secondary meaning in the marks and names in question in this matter.

THIRD AFFIRMATIVE DEFENSE

The Opposer's claims are barred, in whole or in part, by the abandonment of the marks and names in question in this matter.

FOURTH AFFIRMATIVE DEFENSE

Applicant's mark is inherently distinctive, or in the alternative, has acquired secondary meaning.

FIFTH AFFIRMATIVE DEFENSE

The Opposer's claims are barred, in whole or in part, by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

The Opposer's claims are barred, in whole or in part, by unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Applicant is informed and believes, and upon such basis alleges, that the Opposer's claims are barred by a failure to join indispensable parties.

EIGHTH AFFIRMATIVE DEFENSE

The Opposer's claims are trademark misuse.

NINTH AFFIRMATIVE DEFENSE

Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

TENTH AFFIRMATIVE DEFENSE

Opposer lacks standing to bring its claims.

WHEREFORE, in consideration of the foregoing, Applicant respectfully requests that this Court reject Opposer's requests, dismiss Opposer's claim and enter judgment for the Applicant and award it its costs and attorneys' fees, together with such other and further relief to which the Applicant may be justly entitled.

Respectfully submitted,

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