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

Proceeding	91209816
Party	Defendant Berman, Solomon
Correspondence Address	BRENDAN M. SHORTELL LAMBERT & ASSOCIATES 92 STATE ST STE 200 BOSTON, MA 02109-2004 UNITED STATES shortell@lambertpatentlaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Brendan M.Shortell
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Date	06/18/2013
Attachments	Amended Answer to Opposition.pdf(72066 bytes)

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

Quantum Petitioner,)	
)	Opposition No. 91209816
)	Serial No. 85804808
Petitioner,)	Mark: QUANTUM PREP
)	
v.)	
)	
Mr. Solomon Berman,)	
)	
Respondent.)	
)	

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

RESPONDENT’S AMENDED ANSWER TO OPPOSITION

Respondent Mr. Solomon Berman (“Applicant”) answers the Notice of Opposition of Quantum Test Prep (“Petitioner”) as follows:

1. Applicant lacks sufficient information or knowledge as to Petitioner’s claim that they “own” the trade names QUANTUM and QUANTUM TEST PREP to form a belief about the truth of the allegations. Answering further, Applicant denies that Petitioner “own” the trademarks in QUANTUM and QUANTUM TEST PREP.
2. Applicant lacks sufficient information or knowledge to form a belief about the truth of the allegations.
3. Applicant lacks sufficient information or knowledge to form a belief about the truth of the allegations.
4. Admitted that Petitioner filed an application on that date for QUANTUM. Applicant lacks sufficient information or knowledge to form a belief about the truth of the remaining allegations.
5. Applicant lacks sufficient information or knowledge to form a belief about the truth of the allegations.
6. Admitted.
7. Admitted.

8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Admitted.
14. Denied.
15. Denied.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses:

1. The Notice of Opposition is barred by fraud, mistake and/or the doctrine of unclean hands. Upon information and belief, Petitioner's purported date of first use in the United States is not accurate and stated only to support registration. Applicant cannot find any use in the United States by Petitioner prior to August of 2011; however, Petitioner claims a date of first use of February 26, 2011. Petitioner's statement regarding its date of first use is a material representation of fact in regards to the application which Petitioner knows is false.

2. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Petitioner's services, nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval.

3. Applicant's mark, when used in connection with Applicant's services is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Petitioner or as to the origin sponsorship, or approval of Applicant's services by Petitioner.

4. Applicant's mark in its entirety is sufficiently distinctively different from Petitioner's mark to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's services.

5. Applicant's first use of their mark QUANTUM PREP predates Petitioner's first date of use in the applied for QUANTUM mark.

6. Applicant's first use of their mark QUANTUM predates Petitioner's first date of use in the applied for QUANTUM mark.

7. Petitioner's rights in the applied for QUANTUM mark, if any, are limited in scope

due to the weakness of that mark.

8. Applicant reserved the right to add additional affirmative defenses which it may discover after the filing of this Answer.

Respectfully submitted,
Solomon Berman
By its Attorneys,
Lambert & Associates

/Brendan M. Shortel/
Brendan M. Shortell, Esq.
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Dated: June 18, 2013

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a) on June 18, 2013.

/Brendan M. Shortel/
Brendan M. Shortell

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing RESPONDENT'S AMENDED ANSWER TO OPPOSITION was served June 18, 2013 by first-class mail, postage prepaid, on the following counsel for Applicant:

Douglas Burda
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/Brendan M. Shortel/
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