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

Proceeding	91210665
Party	Defendant Brand Builders Group Inc.
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Date	06/24/2013
Attachments	Opp.No.91210665_ZieglerAnswertoNoticeOpposition06-24-2013.pdf(39443 bytes)

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

JULIUS SAMANN LTD.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91210665
)	Appln. Serial No. 85/724,027
DBA BRAND BUILDERS GROUP)	Mark: InstaLink
INC.,)	
)	
Applicant.)	
)	

**APPLICANT’S ANSWER
TO NOTICE OF OPPOSITION, AND AFFIRMATIVE DEFENSES**

Applicant, DBA Brand Builders Group, INC. (“Applicant”), for its answer to the Notice of Opposition filed **May, 16, 2013**, by Julius Samann, LTD (“Opposer”), against application for registration of Applicant’s trademark "InstaLink" (the “Mark”) for, *inter alia*, air deodorizers in Class 5 in Application Serial No. 85/724,027, filed September 8, 2012, which was published for opposition at page TM 274 of the February 26, 2013 *Official Gazette* of the United States Patent and Trademark Office ("USPTO") .

In answer to the Notice of Opposition, Applicant pleads and avers as follows:

1. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 1.
2. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 2.
3. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 3.
4. Applicant denies knowledge and information sufficient to admit or deny the allegations of ¶ 4.
5. Applicant denies each and every allegation contained in ¶ 5.
6. Applicant denies each and every allegation contained in ¶ 6.
7. Applicant admits that, on September 8, 2012, Applicant filed an application under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), for registration of the alleged "InstaLink" trademark for "air deodorizer" in Class 5. Said application was assigned Serial No. 85/724,027
8. Applicant admits the facts stated in ¶ 8.
9. Applicant admits the facts stated in ¶ 9.
10. Applicant admits the facts stated in ¶ 10.
11. Applicant denies each and every allegation contained in ¶ 11.

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12. Applicant denies each and every allegation contained in ¶ 12.
13. Applicant denies each and every allegation contained in ¶ 13.
14. Applicant denies each and every allegation contained in ¶ 14.
15. Applicant denies each and every allegation contained in ¶ 15.
16. Applicant denies each and every allegation contained in ¶ 16.
17. Applicant denies each and every allegation contained in ¶ 17.
18. Applicant denies each and every allegation contained in ¶ 18.
19. Applicant denies each and every allegation contained in ¶ 19.
20. Applicant denies each and every allegation contained in ¶ 20.

AFFIRMATIVE DEFENSES

First Affirmative Defense

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

Second 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 consumer acceptance of the services offered by Applicant in conjunction with the Mark. Such goodwill 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

Third Affirmative Defense

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademark of Opposer are not confusingly similar.

Fourth Affirmative Defense

Alternatively, any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of the word "Link," which is not distinctive. As a result, under the antidissection rule any secondary meaning Opposer may have in its alleged FRESH LINK trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the word "FRESH."

Fifth Affirmative Defense

Opposer's rights in and to the portion of its alleged FRESH LINK trademark are generic or, in the alternative, merely descriptive of the goods or services offered under the mark. Opposer's alleged mark is therefore inherently unprotectable absent acquired distinctiveness, which the alleged FRESH LINK mark lacks.

Sixth Affirmative Defense

Applicant has been using the Mark and developing consumer recognition and goodwill therein since at least April 10, 2009, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time 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.

WHEREFORE, Applicant prays as follows:

- (a) this opposition be dismissed; and
- (b) a registration for the term INSTA LINK be issued to the Applicant.

Dated: June 24, 2013 |

Respectfully Submitted,

/AndrewZiegler/

Andrew B. Ziegler
BRAND BUILDERS GROUP INC.
754 Rolling Hill Drive
River Vale, New Jersey 07675-6167

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, AND AFFIRMATIVE DEFENSES

was served on Opposer at Opposer's Attorney's address as listed in the records of the United States Patent and Trademark Office this 25th day of June, 2013, by sending same, via First Class mail, postage prepaid, to:

Roberta S. Bren
Beth A. Chapman
OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, L.L.P.
1940 Duke Street
Alexandria, Virginia 22314

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 24th day of June, 2013.

/GKevinTownsend/_____

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