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

Proceeding	91211292
Party	Defendant Cellco Partnership
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Date	08/26/2013
Attachments	8-26-13 Celco's Answer.pdf(368564 bytes)

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

In the Matter of Application Serial No. 85/650,359
Published in the *Official Gazette* on February 26, 2013

THE SUNRIDER CORPORATION,

Opposer,

- against -

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Applicant.

Opposition No. 91211292

ANSWER & AFFIRMATIVE DEFENSES

Applicant, Cellco Partnership d/b/a Verizon Wireless (hereinafter "Applicant" or "Verizon Wireless") answers the Notice of Opposition (hereinafter "Notice") filed by Opposer, The Sunrider Corporation (hereinafter "Opposer"), as follows with the paragraphs hereof being numbered to correspond with the like-numbered paragraphs of the Notice:

Verizon Wireless denies the statement made in the introductory paragraph that Opposer would be damaged by the registration of Applicant's mark SUNRIDER which is the subject of U.S. Application Serial No. 85/650,359. Applicant admits only that it is a partnership organized and existing under the laws of the State of Delaware with an address of One Verizon Way, Basking Ridge, New Jersey 07920-1097. Verizon Wireless is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in the introductory paragraph of the Notice, and therefore, denies same.

With respect to the paragraph preceding paragraph 1 of the Notice, Verizon Wireless admits that the mark SUNRIDER, which is the subject of U.S. Application Serial No. 85/650,359, was published for opposition in the Official Gazette dated February 26, 2013, and that on March 28, 2013, a 90-day extension to file a Notice of Opposition through June 26, 2013 was requested and granted. Opposer is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in the introductory paragraph preceding paragraph 1 of the Notice, and therefore, denies same.

1. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 of the Notice, and therefore, denies same.

2. Applicant admits that the United States Patent and Trademark Office (“PTO”) online records at www.tarr.uspto.gov indicate that Registration Nos. 3674233, 3674235, 2281843, 2271322, 2330499, 1972104 and 1972103 are in the name of Opposer. Except as specifically admitted, Verizon Wireless is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 2 of the Notice, and, therefore, denies same.

3. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the Notice, and therefore, denies same.

4. Verizon Wireless denies that any United States registrations that may be in the name of and asserted by Opposer in this proceeding serve as evidence of its exclusive right to use the mark SUNRIDER on all goods/service not described in the

registrations, particularly when the PTO online records at www.tarr.uspto.gov reveal other applications or registrations for SUNRIDER in the name of independent non-parties. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 4 of the Notice, and therefore, denies same.

5. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the Notice, and therefore, denies same.

6. Applicant admits only that the PTO's online records at www.tarr.uspto.gov indicate that certain registrations in the name of and asserted by Opposer in this proceeding purportedly identify compact discs and DVDs in the field of health, nutrition, foods, dietary supplements and cosmetics, all of which are different from wireless communications devices described in Verizon Wireless' application at issue. Except as specifically admitted, Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 6 of the Notice, and therefore, denies same.

7. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the Notice, and therefore, denies same.

8. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the Notice, and therefore, denies same.

9. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the Notice, and therefore, denies same.

10. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the Notice, and therefore, denies same.

11. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the Notice, and therefore, denies same.

12. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the Notice, and therefore, denies same.

13. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the Notice, and therefore, denies same.

14. Applicant admits only that it applied to register the mark SUNRIDER on June 13, 2012 under Application Serial No. 85/650,359 for “[w]ireless telecommunications device featuring transmission of voice, data, image and video, including voice, text, picture and video messaging, Internet access, access to navigation and directional services over the air, the ability to download music, videos and applications over the air, and equipped with a music player and a still image and video camera” in Class 9. Except as specifically admitted, Verizon Wireless is without

information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 14 of the Notice, and therefore, denies same.

15. Verizon Wireless is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the Notice, and therefore, denies same.

16. Verizon Wireless denies the allegations in paragraph 16 of the Notice.

17. Verizon Wireless denies the allegations in paragraph 17 of the Notice.

18. Verizon Wireless denies the allegations in paragraph 18 of the Notice.

19. Verizon Wireless denies the allegations in paragraph 19 of the Notice.

In response to Opposer's prayer for relief, Verizon Wireless denies that Opposer will be damaged by the registration of Applicant's mark SUNRIDER which is the subject of U.S. Application Serial No. 85/650,359 and submits that the opposition should be dismissed in its entirety.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state facts sufficient to constitute a claim upon which relief can be granted against Verizon Wireless, particularly in view of the differences between the products/services, context of use and divergent channels of trade.

2. On information and belief, Opposer has acquiesced in the use by independent non-parties of designations that incorporate the term SUNRIDER in connection with other products, services or businesses, and, further, has acquiesced in and/or failed to object to, oppose, or seek to cancel registrations for non-party marks utilizing SUNRIDER. In reliance on the Trademark Register, and the reported use of SUNRIDER designations in the marketplace by other parties, it was eminently reasonable for Verizon Wireless to adopt the mark-in-opposition. Having acquiesced in the use and registration of other marks containing SUNRIDER, Opposer should be equitably estopped from now claiming injury resulting from Verizon Wireless' use and registration of SUNRIDER.

3. Verizon Wireless' mark SUNRIDER, which is the subject of U.S. Application Serial No. 85/650,359, is not likely to cause confusion, mistake, or deception or otherwise damage Opposer, or Opposer's alleged names or marks.

4. On information and belief, Opposer has no interest or rights in or to SUNRIDER in connection with wireless communications devices prior to Verizon Wireless.

5. On information and belief, the term SUNRIDER, as used allegedly by Opposer, is not a well-know or famous mark.

6. On information and belief, independent non-parties have used, applied for and registered marks which incorporate the term SUNRIDER. On information and belief, in view of (i) other co-existing uses of and the applications and registrations of marks that include SUNRIDER, and (ii) the PTO's approval of the application at issue for publication without objection on the basis of one or more of

Opposer's alleged marks, it is reasonable to conclude that relevant consumers can distinguish between the various SUNRIDER marks based on differences in the marks in overall appearance, pronunciations, commercial impression or context of use, differences between the respective products/services and/or differences between the channels of trade. Therefore, Verizon Wireless can use and register the mark SUNRIDER concurrently with Opposer's alleged marks, as allegedly adopted and purported used by Opposer, without any likelihood of confusion because Verizon Wireless' mark SUNRIDER for wireless communications devices in U.S. Application Serial No. 85/650,359 is different from Opposer's alleged marks, as allegedly used.

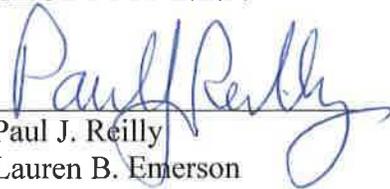
7. On information and belief, Opposer has not and is not likely to suffer any injury or damage as a result of Verizon Wireless' intended use and registration of the mark SUNRIDER which is the subject of U.S. Application Serial No. 85/650,359.

WHEREFORE, Verizon Wireless requests that Opposition No. 91211292 be dismissed in its entirety and that registration be granted on its Application Serial No. 85/650,359 for SUNRIDER.

Respectfully submitted,

BAKER BOTTS L.L.P.

By:


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Attorneys for Applicant

Dated: August 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, ANSWER & AFFIRMATIVE DEFENSES, was served by express courier on Opposer's counsel of record as indicated below:

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on August 26, 2013

By: _____


Paul J. Reilly