

ESTTA Tracking number: **ESTTA575023**

Filing date: **12/06/2013**

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

Proceeding	91212654
Party	Plaintiff Jean Michel Cazabat International Ltd.
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Submission	Answer to Counterclaim
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Signature	/-d-/
Date	12/06/2013
Attachments	Answer to Counterclaim - 91212654.pdf(91069 bytes)

expressly admitted herein, Opposer denies the allegations set forth in Paragraph 23 of the Counterclaims.

Response to Paragraph 24:

Denied as to the allegations contained in Paragraph 24 of the Counterclaim.

Response to Paragraph 25:

As to the allegations contained in Paragraph 25 of the Counterclaim, Opposer admits only that Applicant is listed as the owner of pending application Serial No. 77/783,154 for the REBELS mark, as maintained in the records with the USPTO.

Response to Paragraph 26:

Opposer is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Counterclaim and therefore denies the same.

Response to Paragraph 27:

Admitted as to the allegations contained in Paragraph 27 of the Counterclaim.

Response to Paragraph 28:

Admitted as to the factual allegations contained in Paragraph 28 of the Counterclaim. Opposer neither admits nor denies the legal conclusions asserted in this paragraph.

Response to Paragraph 29:

Admitted as to the factual allegations contained in Paragraph 29 of the Counterclaim. Opposer neither admits nor denies the legal conclusions asserted in this paragraph.

Response to Paragraph 30:

Admitted as to the factual allegations contained in Paragraph 30 of the Counterclaim. Opposer neither admits nor denies the legal conclusions asserted in this paragraph.

Response to Paragraph 31:

Denied as to the allegations contained in Paragraph 31 of the Counterclaim.

Response to Paragraph 32:

As to the allegations contained in Paragraph 32 of the Counterclaim, Opposer admits only that Applicant's REBELS mark is confusingly similar to Opposer's LUXURY REBEL marks and Opposer has superior rights to Applicant's REBELS mark for the reasons previously set forth in its Notice of Opposition in these proceedings. Except to the extent expressly admitted herein, Opposer denies the allegations set forth in Paragraph 32 of the Counterclaim.

Response to Paragraph 33:

Denied as to the allegations contained in Paragraph 33 of the Counterclaim.

Response to Paragraph 34:

As to the allegations contained in Paragraph 34 of the Counterclaim, Opposer admits only that Applicant's REBELS mark is confusingly similar to Opposer's LUXURY REBEL marks and Opposer has superior rights to Applicant's REBELS mark for the reasons previously set forth in its Notice of Opposition in these proceedings. Except to the extent expressly admitted herein, Opposer denies the allegations set forth in Paragraph 34 of the Counterclaim.

Response to Paragraph 35:

As to the allegations contained in Paragraph 35 of the Counterclaim, Opposer admits only that Applicant's REBELS mark is confusingly similar to Opposer's LUXURY REBEL marks and Opposer has superior rights to Applicant's REBELS mark for the reasons previously set forth in its Notice of Opposition in these proceedings. Except to the extent expressly admitted herein, Opposer denies the allegations set forth in Paragraph 35 of the Counterclaim.

Response to Paragraph 36:

Denied as to the allegations contained in Paragraph 36 of the Counterclaim.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, Opposer alleges the defenses set forth below. Opposer reserves the right to allege other defenses, affirmative or otherwise, as may become necessary during the course of additional discovery and/or further proceedings in these proceedings, and hence reserves the right to amend this Answer to assert any such defenses.

1. The facts set forth in Applicant's Counterclaim are insufficient to state a claim or to support a cancellation of Opposer's LUXURY REBEL marks.
2. Applicant abandoned use of the REBELS mark in association with clothing and/or footwear by failing to use the mark for a period of three or more consecutive years, and/or by failing to use the mark for a period of less than three years coupled with an intent not to resume use of the mark in association with the goods.
3. Applicant has not established that it has acquired secondary meaning in the mark REBELS at the time of Opposer's filing date (constructive first use date) of November 9, 2007 to which Opposer is entitled to based upon its Registration No. 3,573,666.
4. Opposer has prior rights over Applicant.
5. Applicant's claims are barred by laches.
6. Applicant's claims are barred by acquiescence.
7. Applicant's claims are barred by waiver.
8. Applicant's claims are barred by estoppel.
9. Applicant's claims are barred by the doctrine of unclean hands.

WHEREFORE, Opposer respectfully requests that Applicant's Counterclaims be dismissed in their entirety.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: December 6, 2013

By: /s/Alan M. Sack/
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Leonard N. Budow
Lisa A. Karczewski

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013, I served a true copy of the foregoing
OPPOSER JEAN MICHEL CAZABAT INTERNATIONAL LTD.'S ANSWER TO
APPLICANT EYAL BALLE'S COUNTERCLAIM upon Applicant's Attorney of Record via
U.S. First Class mail, addressed as follows:

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 /-d-/
Deanna M. McGregor