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

Proceeding	91212712
Party	Defendant XONE SPORT PROPERTIES, LLC
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Date	11/06/2013
Attachments	2013 11 06 ANSWER to Opp XONE.pdf(139220 bytes)

1. Opposer is a corporation, doing business as Hurley International, LLC, organized under the laws of Oregon, with its principal place of business at 1945-G Placentia Avenue, Costa Mesa, California 92627.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and, therefore, denies those allegations.

2. Opposer has been and continues to be engaged in the business of designing, marketing and selling action sports and youth lifestyle apparel, footwear, and accessories, and other goods and related services in the United States and abroad.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and, therefore, denies those allegations.

3. One of the Opposer's long-standing and immediately recognizable trademarks is its  trademark (Hurley Logo), which has been in continuous use in connection with apparel and related goods and accessories since at least as early as 1998.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and, therefore, denies those allegations.

4. Over the years, Opposer has used and continues to use in interstate commerce marks consisting solely of, or in part, the Hurley Logo to which Applicant's mark bears a confusing similarity.

ANSWER: Applicant denies that its mark bears a confusing similarity to the Hurley logo. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies those allegations.

5. Opposer owns a number of United States trademark registrations for the Hurley Logo (the Hurley Logo Marks):

Mark	Registration Number	Registration Date	International Class(es)
	2,406,896	21-Nov-00	18, 25
	2,789,401	2-Dec-03	25
	3,596,523	24-Mar-09	35, 9
	3,613,912	28-Apr-09	35, 41

ANSWER: Applicant admits the allegations contained in paragraph 5 to the extent the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed.

6. Opposer also uses the Hurley Logo within or as a part of a number of other marks (Family of Hurley Marks) and owns the following registrations for some of its Family of Hurley Marks.

Mark	Registration Number	Registration Date	International Class(es)
	3,755,383	March 2, 2010	25
	3,606,398	April 14, 2009	25
	3,938,462	March 29, 2011	35, 41

ANSWER: Applicant admits the allegations contained in paragraph 6 to the extent the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed. Applicant is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in paragraph 6 of the Notice of Opposition and, therefore, denies those allegations.

7. Opposer also has common law rights in the Hurley Logo Marks for use in connection with active and youth lifestyle apparel, shirts, pants, shorts, jackets, swimwear, sweaters, hats, caps, beanie skullcaps, wetsuits, belts, eyewear, ski wear, accessories, and related goods and services.

ANSWER: The allegations contained in this paragraph constitute legal conclusions to which no response is required. To the extent a response is deemed required, applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Notice of Opposition and, therefore, denies those allegations.

8. As a result of extensive advertising, promotion, sales and publicity over the past 15 years, Opposer's Hurley Logo has become associated with Hurley and its goods and services and consumers have come to easily recognize the Hurley Logo and associate it with Hurley and its goods and services, thereby generating significant and extensive goodwill in the mark.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Notice of Opposition and, therefore, denies those allegations.

9. Opposer has promoted and sold its goods in interstate commerce under its Hurley Logo Marks since prior to any alleged use by Applicant of the mark shown in the Application.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Notice of Opposition and, therefore, denies those allegations.

10. Opposer's Hurley Logo Marks are symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and

promotion. Opposer's "Hurley Logo Marks identify and distinguish Opposer's goods from the goods of others and identify the source and origin thereof to both the trade and the public.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Notice of Opposition and, therefore, denies those allegations.

11. Opposer's Hurley Logo is famous as that term is defined under 15 U.S.C. §1125.

ANSWER: The allegations contained in this paragraph constitute legal conclusions to which no response is required. To the extent a response is deemed required, applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Notice of Opposition and, therefore, denies those allegations.

12. Notwithstanding Opposer's rights in and to its Hurley Logo Marks, Applicant, on July 15, 2012, filed an application for registration of the mark . Applicant's application was given Serial No. 85/677,400 and was published for opposition in the Official Gazette on June 4, 2013.

ANSWER: Applicant admits that it filed an application for registration of the mark  on July 15, 2012, which was given Serial No. 85/677,400 and published for opposition in the Official Gazette on June 4, 2013.

13. The published application for the mark  includes the following goods: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests in International Class 25.

ANSWER: Applicant admits that the published application for the mark  includes the following goods: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests in International Class 25.

14. Applicant claims March 1, 2012 as its date of first use.

ANSWER: Applicant admits that it claims March 1, 2012 as its date of first use.

15. Applicant's first use date is subsequent to Opposer's first use of each of the Hurley Logo Marks.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Notice of Opposition and, therefore, denies those allegations.

16. Applicant's filing date is subsequent to Opposer's filing date for each of the Hurley Logo Marks.

ANSWER: Applicant admits the allegations contained in paragraph 16 to the extent the records of the U.S. Patent and Trademark Office and Trademark Trial and Appeal Board substantiate the facts claimed.

17. On information and belief, Opposer's first use of the Hurley Logo Marks predate all potential use of the Applicant's mark as well as the filing by Applicant of the Application.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Notice of Opposition and, therefore, denies those allegations.

18. Applicant's mark  has similar elements and has a high level of similarity in appearance to Hurley's Logo .

ANSWER: Denied.

19. Applicant's recited goods are closely related to the goods offered by Opposer under the Hurley Logo Marks and consumers may be confused as to source of the goods.

ANSWER: Denied.

20. Applicant's mark , when used in connection with the goods set forth in its application, is confusingly similar to Opposer's use of its Hurley Logo Marks. If Applicant registers and uses its mark for its goods in the U.S. it is likely to cause confusion, mistake, and deception among consumers. Registration of Applicant's mark may damage the goodwill and consumer recognition that Opposer has built up in its Hurley Logo Marks.

ANSWER: Denied.

21. Commercial use of the Applicant's mark will cause or is likely to cause dilution of the distinctive quality of Opposer's famous Hurley Logo, as that term is defined in 15 U.S.C. §1125.

ANSWER: Denied.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial No. 85/677,400 in the United States Patent and Trademark Office.

Dated: November 6, 2013

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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**ATTORNEYS FOR XONE SPORT
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CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice of opposition was mailed on November 6, 2013 by first-class mail, postage prepaid to B. Anna McCoy, Attorney for Opposer, in an envelope addressed as follows:

B. Anna McCoy
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DATED: November 6, 2013

/s/ Monica Tavakoli

Monica Tavakoli