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

Proceeding	91212906
Party	Defendant Cashsquare Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of
Trademark Application Serial No. 85/827,823
Published in the Official Gazette: June 11, 2013
Mark: CASHSQUARE

Square, Inc.,)	
)	
)	
v.)	Opposition No. 91212906
)	
)	
Cashsquare, Inc.,)	
)	
)	
Applicant.)	
_____)	

Commissioner for Trademarks
P.O. Box 1451
Alexandra, Virginia 22313-1451

APPLICANT’S ANSWER

TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES

Applicant, Cashsquare, Inc., (“Applicant”) having its registered office at 2711 Centerville Road, Suite 400, Wilmington, DE 19808, for its answer to the Notice of Opposition filed by Square, Inc. (“Opposer”) against application for registration of Applicant’s trademark CASHSQUARE, Serial No. 85/827,823 filed on January 21, 2013, and published in the Official Gazette of June 11, 2013 (the “Mark:”), pleads and avers as follows:

DENIALS

Applicant does not have knowledge or information sufficient to admit or deny the allegations in the preamble concerning Opposer’s business organization, location, or belief with respect to the

Application Serial Number 85/827,823 for Applicant in International Class 009 (“CASH SQUARE” or “Applicant’s Mark”), and on that basis, denies those allegations and further denies that Opposer will be damaged by the registration of Applicant’s Mark.

1. Applicant admits that it is the owner of Application Serial Number 85/827,823 (the “Application”), published in the June 11, 2013 issue of the Official Gazette; Applicant admits also that it filed the Application on January 21, 2013 based upon its bona fide intent to use the mark in commerce on specified goods and services in International Class 009, and admits further that paragraph 1 of the Opposition appears to accurately recite the goods and services described in the Application. Applicant denies any allegations in paragraph 1 of the Opposition which it does not expressly admit.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the truth of the averments the validity, ownership or priority of the Opposer’s Marks referenced in Paragraph 2, of the Opposition, and on that basis denies them.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the truth of the averments the validity, ownership or priority of the Opposer’s Marks referenced in Paragraph 3, of the Opposition, and on that basis denies them.

4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the truth of the averments the validity, ownership

or priority of the Opposer's Marks referenced in Paragraph 6, of the Opposition, and on that basis denies them. Applicant specifically denies that Opposer's SQUARE or SQUARE-based Marks are entitled to any special protections as famous marks, and avers that because they are weak, merely descriptive, and devoid of secondary meaning, they should be afforded narrow and limited protections, if any.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

9. Answering paragraph 9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

10. Answering paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

11. Answering paragraph 11 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

12. Answering paragraph 12 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the truth of the averments the validity, ownership or priority of the Opposer's Marks referenced in Paragraph 12, of the Opposition, and on that basis denies them. Applicant specifically denies that Opposer's SQUARE or SQUARE-based Marks are entitled to any special protections as famous marks, and avers that because they are weak, merely descriptive, and devoid of secondary meaning, they should be afforded narrow and limited protections, if any.

13. Answering paragraph 13 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant specifically denies that the referenced SQUARE or SQUARE-based Marks are famous, or, if the SQUARE or SQUARE-based Marks are famous, Applicant denies that they became famous “well before” Applicant adopted the “CASHSQUARE” mark.

14. Answering paragraph 14 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

15. Answering paragraph 15 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

16. Answering paragraph 16 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

17. Answering paragraph 17 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

18. Answering paragraph 18 of the Notice of Opposition, Applicant admits the allegations of Paragraph 18, subject, however, to Applicants specific denial of any averment that Applicant needed any consent or agreement from Opposer to file the Application.

19. Answering paragraph 19 of the Notice of Opposition, Applicant admits that it removed one of many images on its web site after receipt of a letter from Opposer and denies other allegations contained therein.

20. Answering paragraph 20 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 20 of the Opposition, and on that basis denies them, except that Applicant specifically denies that Applicants Mark is confusingly similar to any of the Opposer’s SQUARE or SQUARE-based Marks referenced, denies that the parties’ commercial markets are virtually identical, denies that similarities, if any, between the parties respective marks or markets are likely to cause confusion or mistake or to deceive, and denies that confusion or mistake or deception, if any, has caused any loss, damage or injury to Opposer or the purchasing public.

21. Answering paragraph 21 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

22. Answering paragraph 22 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

23. Answering paragraph 23 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

24. Answering paragraph 24 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

25. Answering paragraph 25 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

26. Answering paragraph 26 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

27. Answering paragraph 27 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that Opposer fails to set forth facts sufficient to oppose the registration of the Applicant's mark, or state a claim upon which any relief can be granted.

Second Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that as a result of Applicant's continuous use of the Mark since the time of Applicant's adoption hereof, 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

As a separate and affirmative defense to the Opposition, Applicant alleges that there is no likelihood of confusion, mistake or deception because, inter alia, the Mark and the pleaded marks of the Opposer are not confusingly similar.

Fourth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that there is no likelihood of confusion, mistake, false suggestion, or deception because, inter alia, the Applicant's Mark and the pleaded marks of the Opposer, as used by the parties, are not confusingly similar. Any similarity between the Mark and the Opposer's alleged trademark is restricted to that portion of the Mark containing the word "square", which is not distinctive. As a result, under the antidissection rule any secondary meaning Opposer may have in its marks is narrowly circumscribed to the exact trademarks alleged and does not extend to any other feature of the trademarks beyond the word "square"

Fifth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that there is no likelihood of confusion, mistake, false suggestion, or deception because, inter alia, the Mark and the pleaded marks of the Opposer are not confusingly similar. Due to extensive third-party use, applications for, or registrations of marks identical or confusingly similar to the "SQUARE" or "SQUARE" based marks, used in connection with goods and services identical or similar to those as to which the Opposer claims rights, Opposer's rights, if any, are too severely limited as to give to any enforceable rights against Applicant or to prevent the registration of the Applicant's Mark.

Sixth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that alternatively, any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of letters "square", which is not distinctive. Both marks are phonetically pronounced differently. Phonetically, Opposer's mark "Square" and "Square Up" are singularly limited to the phonetic pronunciation as "skwair" and "skwair up". As opposed to applicant's mark (Cashsquare) which may be generally and phonetically pronounced as "cashsquare". As a result, under the antidissection rule any secondary meaning Opposer may have in its alleged SQUARE or SQUARE UP trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any feature of the trademark beyond the letters "SQUARE".

Seventh Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that Opposer's pleaded marks is or has become generic for inexpensive, convenient or fast but low quality or commercialized versions of credit card payment processing, and therefore cannot have meaning as a trademark. Or, in the alternative, Opposer's marks are merely descriptive of the goods or services offered under the mark. Opposer's pleaded marks are therefore inherently unprotectable absent acquired distinctiveness, which the pleaded marks lack.

Eighth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that the Opposition is barred by the doctrine of unclean hands.

Ninth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that the Opposition is barred by the doctrine of waiver.

Tenth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that the Opposition is barred because Opposer has suffered no damages.

Eleventh Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that the Opposition is barred in that Applicant's actions were taken in good faith, based on good, sufficient, and legal cause, upon reasonable grounds for belief in their truth or justification,

Twelfth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that there is no likelihood of dilution by blurring because Opposer's and Applicant's marks are not sufficiently similar; there are, upon information and belief, numerous uses and registrations of third party marks with the "square" formative; the Applicant's did not intend any association with Opposer's marks or any of them; and upon information and belief, ordinary prospective purchaser of Applicant's services do not associate Applicant's and Opposer's marks.

Thirteenth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that Applicant's services and Opposer's services are not marketed through the same channels of trade.

Fourteenth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that Applicant does not provide credit card processing services, and or merchant card services.

Fifteenth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges Applicant's marks and Opposer's marks are not likely to cause confusion, mistake, false

suggestion or deception to purchasers as to the source of Opposer's goods or services.

Sixteenth Affirmative Defense

As a separate and affirmative defense to the Opposition, Applicant alleges that Applicant's marks and Opposer's marks are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant.

Seventeenth Affirmative Defense

Applicant further affirmatively alleges that its application should be allowed to proceed over a likelihood of confusion rejection because the word "square" or its phonetic equivalent is highly diluted. A basic word search for "square" showed that there were over 3000 registered results in the TEAS system.

WHEREFORE, Applicant prays that Opposer's Notice of Opposition be rejected and dismissed, and that a registration for the mark CASHSQUARE be issued to the Applicant.

Dated: November 18, 2013

Respectfully Submitted,



Leonard Grayver
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