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Filing date: **07/15/2014**

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

Proceeding	91213564
Party	Defendant Paul Audio, Inc.
Correspondence Address	A JUSTIN LUM LUM LAW GROUP 1005 E COLORADO BLVD, SUITE 207 PASADENA, CA 91106 UNITED STATES ajlum@lumlawgroup.com, jvien@lumlawgroup.com
Submission	Motion to Amend/Amended Answer or Counterclaim
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Signature	/A. Justin Lum/
Date	07/15/2014
Attachments	Paul Audio adv Shenzhen #2 - Amended Answer to Opposition.pdf(142209 bytes)

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

In re Trademark Application Serial no. 85697706
Filed: August 7, 2012
For Mark: "C-MARK" in International Class 35
Published in the Official Gazette on November 5, 2013

SHENZHEN BAO YE HENG INDUSTRIAL)	
DEVELOPMENT CO., LTD.,)	Opposition No. 91213564
)	
Opposer,)	
)	
)	APPLICANT
)	PAUL AUDIO, INC.'S
)	AMENDED
v.)	ANSWER TO OPPOSITION
)	NO. 91213564
PAUL AUDIO, INC.)	
)	
)	
Applicant.)	
_____)	

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Applicant's Amended Answer to the Notice of Opposition

In response to the order issued by the Trademark Trial and Appeal Board on June 30, 2014, Applicant PAUL AUDIO, INC. ("Applicant") hereby amends its answer to the Notice of Opposition ("Opposition") of Opposer, SHENZHEN BAO YE HENG INDUSTRIAL DEVELOPMENT CO., LTD., as follows:

1. In response to the allegations of paragraph 1 of the opposition, Applicant admits the allegations of paragraph 1 as stated.

2. In response to the allegations of paragraph 2 of the opposition, Applicant denies the allegations of paragraph 2.

3. In response to the allegations of paragraph 3 of the opposition, Applicant denies the allegations of paragraph 3.

4. In response to the allegations of paragraph 4 of the opposition, Applicant admits the allegations of paragraph 4 as stated.

5. In response to the allegations of paragraph 5 of the opposition, Applicant denies the allegations of paragraph 5.

6. In response to the allegations of paragraph 6 of the opposition, Applicant denies any allegation of non-use. Applicant admits the remaining allegations of paragraph 6 of the opposition as stated.

7. In response to the allegations of paragraph 7 of the opposition, Applicant denies the allegations of paragraph 7, including any allegation of non-use.

8. In response to the allegations of paragraph 8 of the opposition, Applicant admits that Baoning Zhou filed a U.S. trademark application in which he alleged he, not Opposer, was the owner of the mark, "C-MARK". Applicant further admits that said registration which was later cancelled. As to the remaining allegations, Applicant denies each and every other allegation contained therein.

9. In response to the allegations of paragraph 9 of the opposition, Applicant denies it ever abandoned use of the mark, "C-MARK". As to the remaining allegations, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every other allegation contained therein.

10. In response to the allegations of paragraph 10 of the opposition, Applicant denies the allegations of paragraph 10.

11. In response to the allegations of paragraph 11 of the opposition, Applicant denies the allegations of paragraph 11.

12. In response to the allegations of paragraph 12 of the opposition, Applicant denies the allegations of paragraph 12.

13. In response to the allegations of paragraph 13 of the opposition, Applicant admits the allegations of paragraph 13 as stated.

14. In response to the allegations of paragraph 14 of the opposition, Applicant denies the allegations of paragraph 14, including any allegations of non-use or intent to deceive.

15. In response to the allegations of paragraph 15 of the opposition, Applicant admits the allegations of paragraph 15 as stated.

COUNT I

16. Applicant repeats and re-alleges its responses contained in paragraphs 1-15 of this Answer to Opposition as if fully set forth herein.

17. In response to the allegations of paragraph 17 of the opposition, Applicant admits that Applicant's and Opposers goods are similar. Notwithstanding Applicant denies the allegations of paragraph 17 of the opposition, including any claims by Opposer to any superior rights in any "C-MARK Marks."

18. In response to the allegations of paragraph 18 of the opposition, Applicant admits that is "C-Mark" mark and Opposer's claimed "C-Mark marks" are similar. Notwithstanding, Applicant denies the allegations of paragraph 18 of the opposition, including any claims by Opposer to any superior rights in any "C-MARK Marks."

19. In response to the allegations of paragraph 19 of the opposition, Applicant denies the allegations of paragraph 19 of the opposition.

COUNT II

20. Applicant repeats and re-alleges its responses contained in paragraphs 1-19 of this Answer to Opposition as if fully set forth herein.

21. In response to the allegations of paragraph 21 of the opposition, Applicant denies the allegations of paragraph 21 of the opposition, including any claims by Opposer to any "C-MARK Marks."

22. In response to the allegations of paragraph 22 of the opposition, Applicant denies the allegations of paragraph 22 of the opposition, including any claims by Opposer to any "C-MARK Marks."

23. In response to the allegations of paragraph 23 of the opposition, Applicant denies the allegations of paragraph 23 of the opposition.

COUNT III

24. Applicant repeats and re-alleges its responses contained in paragraphs 1-23 of this Answer to Opposition as if fully set forth herein.

25. In response to the allegations of paragraph 25 of the opposition, Applicant denies the allegations of paragraph 25 of the opposition.

26. In response to the allegations of paragraph 26 of the opposition, Applicant denies the allegations of paragraph 26 of the opposition.

27. In response to the allegations of paragraph 27 of the opposition, Applicant denies the allegations of paragraph 27 of the opposition.

28. In response to the allegations of paragraph 28 of the opposition, Applicant denies the allegations of paragraph 28 of the opposition.

29. In response to the allegations of paragraph 29 of the opposition, Applicant denies the allegations of paragraph 29 of the opposition.

30. In response to the allegations of paragraph 30 of the opposition, Applicant denies the allegations of paragraph 30 of the opposition.

Affirmative Defenses

In further answer to the opposition Applicant asserts that:

31. Applicant is entitled to register the mark based on its first use of the mark, "C-MARK" in the United States in 1993, and continued use of the mark through the present.

32. Applicant is entitled to register the mark, "C-MARK" for "Wholesale distributorships featuring audio apparatus; Retail store and on-line retail store services all featuring audio apparatus," because Applicant properly filed an application for said mark which was examined and issued a Notice of Publication.

33. Applicant's mark is a unique word mark that is not similar to any prior, pending, or registered marks.

34. On information and belief, that Opposer has waived any rights or claims against Applicant based on Opposer's acts or omissions. Opposer through the actions of its President Baoning Zhou has waived any right to claim first use of the trademark, "C-MARK." Baoning Zhou previously filed a trademark application which included his signature, under penalty of perjury, that he, not Opposer, allegedly used the mark in the United States during the years of 2004-2008.

35. On information and belief, that Opposer is estopped from asserting any rights or claims against Applicant based on Opposer's acts or omissions. Opposer through the actions of its President Baoning Zhou is estopped from claiming first use of the trademark, "C-MARK." Baoning Zhou previously filed a trademark application which included his signature, under penalty of perjury, that he, not Opposer, allegedly used the mark in the United States during the years of 2004-2008.

Prayer of Relief

WHEREFORE, Applicant prays that

1. Opposer's Opposition proceeding be dismissed and the registration of Applicant's mark be issued forthwith; and
2. such other further reliefs that the TTAB deems necessary.

Dated this 15th day of July, 2014.

Respectfully,

s/A. Justin Lum/
A. Justin Lum

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Amended Answer to Opposition No. 91213564 is being transmitted electronically to the Commissioner for Trademarks – <http://esta.uspto.gov>

Dated: 07/15/14

By: s/A. Justin Lum/
A. Justin Lum

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and I am employed in Pasadena, California. I am over the age of 18 and not a party to the within action. My business address is 1005 E. Colorado Blvd., Suite 207, Pasadena, California 91106. On the below execution date, I served the within AMENDED ANSWER TO OPPOSITION to the parties or their counsel shown below:

Hubert Kuo
ARDENT LAW GROUP, P.C.
2600 Michelson Dr., Suite 1700
Irvine, CA 92612

X (BY MAIL) I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (BY ESTTA NOTIFICATION) Party was served with notice by email through the United States Patent and Trademark Office's ESTTA Notification system.

(BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to a representative of the addressee.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 15, 2014 at Pasadena, California.

s/Jeffrey Vien/
Jeffrey Vien