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

Proceeding	91215685
Party	Defendant WDFC SA
Correspondence Address	ALEXANDRE A. MONTAGU MONTAGULAW, P.C. 1120 AVENUE OF THE AMERICAS FL 4 NEW YORK, NY 10036-6700 mliss@leydig.com, asimmons@leydig.com, trademark@leydig.com
Submission	Answer
Filer's Name	Mark J. Liss
Filer's e-mail	mliss@leydig.com, asimmons@leydig.com, lcurry@leydig.com, trade-mark@leydig.com
Signature	/Mark J. Liss/
Date	06/09/2014
Attachments	91215685 Answer Word Mark.pdf(1826553 bytes)

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

EVERBANK,	Opposition No. 91215685
Opposer,	
v.	In the Matter of Application Serial Number 86/008883
WDFC SA,	Mark: EVERLINE Filed: July 12, 2013
Applicant.	Published: December 3, 2013

ANSWER TO NOTICE OF OPPOSITION

WDFC SA, a Swiss corporation located in Geneva, Switzerland, answers the above-captioned Notice of Opposition as follows:

WDFC SA (hereinafter "Applicant") lacks information sufficient to form a belief as to the truth of the allegations contained in the unnumbered paragraph commencing the Opposition concerning Opposer, Opposer's address, business activities and belief and, therefore, denies the same. Applicant denies that Opposer will be damaged by the registration of the mark shown in the instant application and any remaining allegations.

Further answering, Applicant states:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies the same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore denies the same.

3. Applicant denies the allegations in paragraph 3.

4. Applicant denies the allegations contained in paragraph 4.

5. Applicant denies the allegations contained in paragraph 5.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 and therefore denies the same.

7. Applicant admits that on July 12, 2013, it filed an application asserting a bona fide intention to use the mark "EVERLINE" for "online financial services, in particular, the provision of loans or credit for business purposes following an online application". Applicant admits that this application was published for Opposition in the Official Gazette on December 3, 2013 after the Examiner found no confusingly similar marks. Applicant denies all remaining allegations in paragraph 7.

8. Admitted.

9. Applicant denies Opposer has a family of marks. Applicant is without information sufficient to form a belief as to a truth or falsity of the allegations regarding Opposer's alleged prior use and alleged substantial investment in promotion and advertising and as to the nature of Opposer's services. Applicant admits that it obtained a search of Trademark Office records and other records and such searches revealed numerous marks and trade names using or containing "EVER" by a wide variety of third-parties, including Opposer and also including third-parties whose use of "EVER" in the banking field predated Opposer and/or whose use of "EVER" peacefully co-exists with Opposer. Applicant denies any remaining allegations in paragraph 9.

10. Applicant admits that its mark is "EVERLINE" and the mark speaks for itself. Applicant denies its mark will be viewed as a composite mark consisting of "EVER" and "LINE," but rather will be viewed as a unitary mark, thus, "EVERLINE". Applicant denies all remaining allegations in paragraph 10.

11. Applicant denies that Opposer has a family of marks. Applicant lacks information sufficient to form a belief as to a truth or falsity of the remaining allegations in paragraph 11 and therefore denies the same.

12. Applicant denies the allegations of paragraph 12.

13. Applicant denies the allegations of paragraph 13.

AFFIRMATIVE DEFENSE

Opposer, through this Opposition, seeks basically to claim exclusive rights to the word "EVER" used as part of a mark in connection with financial services. However, prior to its own adoption and use of "EVERBANK" and any other mark containing "EVER," Opposer was aware of U.S. Registration Number 1,960,138 for the mark "EVERTRUST" covering "banking and loan financing services, credit card services," claiming a first use in 1995. This registration issued on March 5, 1996 and remains valid and in use today. When Opposer adopted "EVERBANK" and its alleged other marks containing "EVER," it was well aware of this registration and signed an Affidavit to the U.S. Trademark Office indicating its alleged "EVERBANK" mark and its alleged other "EVER" marks where not confusingly similar to any third-party mark. Thus, the Opposer took the position that "EVERTRUST" and "EVERBANK," both used in connection with banking services, can peacefully coexist. Opposer is thus estopped from claiming that it has exclusive rights to "EVER" in the financial service or banking area and that a mark such as "EVERLINE," which is certainly more dissimilar from "EVERBANK" than "EVERTRUST," is likely to cause confusion. Furthermore, Opposer attempting to claim exclusive rights to "EVER" in view of its previously sworn position that its various marks can coexist with "EVERTRUST" constitutes trademark misuse and thus should not be a basis for this Opposition.

PRAYER FOR RELIEF

WHEREFORE, Applicant believes and avers that Opposer will not be damaged by the registration of Applicant's mark and prays that this Opposition be dismissed and that U.S. Trademark Application Serial Number 86/008883 be approved, and a Notice of Allowance issue to Applicant.

DATED: June 9, 2014

WDFC SA

Mark J. Liss
Angela J. Simmons
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza - Suite 4900
180 North Stetson Avenue
Chicago, IL 60601-6731
(312) 616-5639
ATTORNEYS FOR APPLICANT WDFC SA

CERTIFICATE OF ELECTRONIC FILING

The undersigned attorney hereby certifies that the attached **ANSWER TO NOTICE OF OPPOSITION** was filed electronically with the Trademark Trial and Appeal Board on June 9, 2014.

Mark J. Liss

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of this **ANSWER TO NOTICE OF OPPOSITION** was served via email and First Class Mail on June 9, 2014 to Opposer's counsel of record as follows:

Karen Koster Burr
Associate General Counsel
EverBank
301 W. Bay Street, 27th Floor
Jacksonville, FL 32202
Email: Karen.KosterBurr@EverBank.com

Mark J. Liss