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

Proceeding	91219077
Party	Defendant Telebrands Corp.
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Submission	Answer
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Date	03/30/2015
Attachments	Tristar v. Telebrands_Answer to Second Amended Notice of Opposition_FINAL.pdf(124136 bytes)

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

Tristar Products, Inc.)	
)	Opposition No. 91219077
Opposer,)	
)	Application Serial No.
v.)	86/232781
)	
Telebrands Corp.)	
)	
Applicant.)	

**APPLICANT TELEBRANDS CORP.’S ANSWER TO
SECOND AMENDED NOTICE OF OPPOSITION**

Applicant Telebrands Corp. (“Telebrands”), but its undersigned counsel, hereby answers the Opposer Tristar Products, Inc.’s (“Tristar”) Second Amended Notice of Opposition as follows:

COUNT 1 – Section 2(d) of the Trademark Act – Likelihood of Confusion

1. Telebrands admits the allegations contained in Paragraph 1 of the Second Amended Notice of Opposition.
2. Telebrands admits the allegations contained in Paragraph 2 of the Second Amended Notice of Opposition.
3. Telebrands is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Second Amended Notice of Opposition, and therefore denies those allegations.
4. Telebrands is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Second Amended Notice of Opposition, and therefore denies those allegations.

5. Telebrands denies the allegations contained in Paragraph 5 of the Second Amended Notice of Opposition.

6. Telebrands denies the allegations contained in Paragraph 6 of the Second Amended Notice of Opposition.

7. Telebrands is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Second Amended Notice of Opposition, and therefore denies those allegations.

8. Telebrands denies that U.S. Trademark Application Serial No. 85/826741 is for the word mark COPPER WEAR, which words have been disclaimed, and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of the Second Amended Notice of Opposition, and therefore denies those allegations.

9. Telebrands is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Second Amended Notice of Opposition, but admits that the records of the United States Patent and Trademark Office reflect the allegations recited in this paragraph.

10. Telebrands is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Second Amended Notice of Opposition, but admits that the records of the United States Patent and Trademark Office reflect the allegations recited in this paragraph.

11. Telebrands admits that the records of the United States Patent and Trademark Office reflect that U.S. Trademark Application Serial No. 85/826741 was filed on January 18, 2013, which is prior to the date on which the subject application was filed, on March 26, 2014, as alleged in Paragraph 11 of the Second Amended Notice of Opposition.

12. Telebrands denies the allegations contained in Paragraph 12 of the Second Amended Notice of Opposition.

13. Telebrands denies the allegations contained in Paragraph 13 of the Second Amended Notice of Opposition.

14. Telebrands denies that Opposer's mark is the word mark COPPER WEAR, but admits that both the subject application and U.S. Trademark Application Serial No. 85/826741 recite goods in International Class 025, as alleged in paragraph 14 of the Second Amended Notice of Opposition.

15. Telebrands denies the allegations contained in Paragraph 15 of the Second Amended Notice of Opposition.

16. Telebrands denies the allegations contained in Paragraph 16 of the Second Amended Notice of Opposition.

17. Telebrands denies the allegations contained in Paragraph 17 of the Second Amended Notice of Opposition.

COUNT II – Section 2(e)(1) of the Trademark Act – Merely Descriptive and/or Generic

18. Paragraph 18 of the Second Amended Notice of Opposition does not require a response.

19. Telebrands denies the allegations contained in Paragraph 19 of the Second Amended Notice of Opposition.

20. Telebrands admits the allegations contained in Paragraph 20 of the Second Amended Notice of Opposition.

21. Telebrands admits the allegations contained in Paragraph 21 of the Second Amended Notice of Opposition.

22. Telebrands admits the allegations contained in Paragraph 22 of the Second Amended Notice of Opposition.

23. Telebrands admits that its mark contains the word HANDS, but denies the remaining allegations contained in Paragraph 23 of the Second Amended Notice of Opposition.

24. Telebrands denies the allegations contained in Paragraph 24 of the Second Amended Notice of Opposition.

25. Telebrands denies the allegations contained in Paragraph 25 of the Second Amended Notice of Opposition.

26. Telebrands denies the allegations contained in Paragraph 26 of the Second Amended Notice of Opposition.

27. Telebrands denies the allegations contained in Paragraph 27 of the Second Amended Notice of Opposition.

28. Telebrands denies the allegations contained in Paragraph 28 of the Second Amended Notice of Opposition.

TELEBRANDS' AFFIRMATIVE DEFENSES

In addition to the defenses set forth below, Telebrands reserves the right to allege additional defenses as they become known through the course of discovery.

FIRST AFFIRMATIVE DEFENSE

Opposer's mark that is the subject of U.S. Trademark Application Serial No. 85/826741 is a design mark that is described as follows: "The mark consists of the wording COPPER WEAR in grey, with a copper-colored paintbrush-style stroke at the diagonal between the two words." The colors grey and copper are claimed, but the words COPPER and WEAR are disclaimed. Accordingly, Opposer has no right to the words COPPER WEAR apart from the design mark as

shown in the application. Applicant's mark does not use any of the design features of Opposer's mark.

SECOND AFFIRMATIVE DEFENSE

Opposer's alleged common law word mark, COPPER WEAR, is not distinctive and is descriptive of the goods recited in the application.

THIRD AFFIRMATIVE DEFENSE

Applicant's mark is not merely descriptive because, *inter alia*, the mark has acquired secondary meaning.

FOURTH AFFIRMATIVE DEFENSE

Opposer is not entitled to relief because it has unclean hands, by virtue of its assertion of a design mark against a word mark, where the only alleged similarity is the word COPPER which has been disclaimed.

Respectfully submitted,

Telebrands Corp.

Dated: March 30, 2015

/Robert T. Maldonado/

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on Opposer's counsel, at the following address of record, by First Class Mail, postage prepaid, this 30th day of March 2015.

Cheryl A. Clarkin, Esq.
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Providence, Rhode Island 02903-3908

Dated: March 30, 2015

/Robert T. Maldonado/_____

Robert T. Maldonado
Attorney for Applicant