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

Proceeding	91222694
Party	Defendant 33rd Republic
Correspondence Address	33RD REPUBLIC 33RD REPUBLIC 230 W SUPERIOR ST # 121 CHICAGO, IL 60654-3595 uspto@legal-sherpa.com
Submission	Answer
Filer's Name	Elizabeth Oliner
Filer's e-mail	liz@olinerlaw.com
Signature	/Elizabeth Oliner/
Date	08/11/2015
Attachments	33rd Republic Answer to Opposition .pdf(122173 bytes)

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

In the Matter of Application Number [86520772](#)

33rd Company, Inc.
Petitioner,

Opposition No. 91222694

vs.

33rd Republic
Applicant

ANSWER TO NOTICE OF OPPOSITION

33rd Republic (“Applicant” or “33rd Republic ”) denies that the Opposer (or “Petitioner” or “Registrant”) will be damaged by the registration of its trademark for 33rd Republic and hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant admits that Opposer is the owner of the trademark, 33rd COMPANY, registered in connection with “real estate agencies.”
2. Admitted.
3. Admitted.
4. Denied.
5. Denied.

6. Admitted. Though this is not an allegation brought against the Applicant, but simply a legal test.
7. Admitted. Though this is not an allegation brought against the Applicant, but simply a legal test.
8. Admitted. Though this is not an allegation brought against the Applicant, but simply a legal test.
9. Admitted. Though this is not an allegation brought against the Applicant, but simply a legal test.
10. There is nothing to respond to here.
11. The Applicant admits that it applied for a design Mark. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies the same.
12. Denied.
13. There is nothing to respond to here. The Registrant is simply citing case law.
14. Denied.
15. There is nothing to respond to here. The Registrant is simply citing case law and making legal arguments.
16. There is nothing to respond to here. The Registrant is simply citing case law and making legal arguments.
17. The Applicant admits that both marks contain the number “33rd” and denies the remaining allegations, if any, contained in this paragraph.
18. Denied. Though Applicant is not sure there are any allegations made here. Rather, the Registrant is making legal arguments.

19. Denied.
20. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
21. Denied.
22. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
23. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
24. Denied.
25. Denied.
26. Admitted.
27. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
28. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.
29. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.
30. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.
31. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
32. Denied.

33. Denied. Applicant is also willing to amend its description of goods and services to make it clear that it is not connecting buyers and sellers of real estate, since Applicant's company is unrelated to real estate.

34. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.

35. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.

36. There is nothing to respond to here. The Registrant is making legal arguments and not making any allegation that requires the Applicant's response.

37. Denied.

38. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in this paragraph related to Registrant's use of its Mark on clothing products and therefore denies the same. However, the Registrant's mark is registered solely in connection with real estate agencies and not clothing and the Registrant is not a clothing company. Applicant denies the remaining allegations related to consumer confusion and dilution of the Opposer's brand.

39. Applicant denies that the channels of trade are identical. The Applicant's services are completely unrelated to real estate and the Applicant is not targeting those looking to buy or sell real estate.

40. Denied.

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

42. Denied.

43. Denied.
44. Denied.
45. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
46. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
47. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
48. Denied.
49. No response is required.
50. Denied.
51. Denied.
52. Denied.
53. Denied.
54. Denied.
55. This does not require a response.
56. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
57. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies the same.
58. Denied.
59. Denied.
60. Denied.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief can be granted.
2. Applicant's mark, when used in connection with the services offered, will not cause damage to Petitioner.
3. Applicant's mark is not likely to cause confusion or to cause deception or mistake with Petitioner's mark, given the different uses and target markets of each business.
4. Petitioner's claims are precluded because Petitioner is engaging in trademark misuse in that Petitioner is attempting to improperly extend the scope of its trademark rights against Applicant.
5. Petitioner's claims are precluded by its unclean hands, in that it is seeking to assert exclusive rights to the word "33rd" against Applicant's unrelated services, which Petitioner knows, or has reason to know, is an improper assertion under trademark law.
6. Petitioner's mark is not famous.

Petitioner's mark is certainly not famous across all categories of goods and service and the scope of protection to which the mark is entitled is not broad enough to preclude the registration of Applicant's mark.
7. Petitioner does not have exclusive rights in the word 33rd for across all categories of goods and services.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that the Petition for Opposition be dismissed in its entirety with prejudice and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

DATED: August 11, 2015

By: /Elizabeth Oliner/

Elizabeth Oliner, Esq.
Oliner Law
345 Grove Street
San Francisco, CA 94102

ATTORNEY FOR APPLICANT

Certificate of Mailing and Service

I certify that on August 11, 2015, the foregoing ANSWER TO NOTICE OF OPPOSITION is being served by mailing a copy thereof by certified mail addressed to the Petitioner:

[Thomas R. Sedlack](mailto:tomsedlack@33rdcompany.com)
33RD COMPANY, INC.
10451 Glen Eagle Circle
Woodbury, MN 55129
UNITED STATES
tomsedlack@33rdcompany.com

By: /Elizabeth Oliner/

Oliner Law
ATTORNEY FOR APPLICANT