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

Proceeding	91222744
Party	Defendant Sand Hill UX Inc.
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Date	08/28/2015
Attachments	Sandhill UX Answer.pdf(114819 bytes)

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

Sandhills Publishing Company

Plaintiff,

v.

Sand Hill UX Inc.

Defendant.

Mark: SANDHILL UX

Serial No.: 86486142

Proceeding No.: 91222744

Date of Publication: June 9, 2015

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER’S NOTICE
OF OPPOSITION**

Applicant, SAND HILL UX, INC., a corporation with an address of P.O. Box 620305, Woodside, California, 94062 (“Applicant”), through its undersigned attorneys, submits its Answer and Affirmative Defenses to the Notice of Opposition (“Opposition”) filed by SANDHILLS PUBLISHING COMPANY, INC., (“Opposer”) on July 9, 2015 as follows:

In response to the grounds for opposition enumerated in Opposer’s Electronic System for Trademark Trials and Appeals (“ESTTA”) Notice of Opposition form, Applicant denies that there are any grounds to sustain the opposition and denies that Opposer owns any mark(s) sufficient to constitute a basis for this Opposition.

In response to the first unnumbered paragraph, Applicant admits that the records of the Trademark Status and Document Retrieval (“TSDR”) of the United States Patent and Trademark Office (“USPTO”) reflect that Applicant owns Serial No. 86486142. Except as expressly admitted, Applicant denies each and every remaining allegation in the first unnumbered paragraph of the Opposition.

1. In response to Paragraph 1, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies each and every allegation in paragraph 1 of the Opposition.
2. In response to Paragraph 2, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 and, therefore, denies each and every allegation in paragraph 2 of the Opposition.
3. In response to Paragraph 3, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and denies each and every allegation in paragraph 3 of the Opposition.
4. In response to Paragraph 4, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant responds that Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and denies each and every allegation in paragraph 4 of the Opposition.
5. In response to paragraph 5, Applicant admits that the records of the TSDR of the USPTO reflect that Opposer is the owner of Registration No. 2219951 in International Class 042 in connection with “Computer services, namely, providing on-line magazines and newspapers in the field of computer use, 3 computer equipment, heavy machinery sales, heavy truck sales and airplane sales” and in International Class 041 in connection with “Publishing services, namely, the publication of magazines and newspapers”; and Serial Nos. 86271481 and 86271470 both in International Class 009 in connection with “A

proprietary software platform consisting of high-level application programming tools that provide self-documenting task and workflow management, project management, application-level security, and enterprise-class application integration.” Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 5 of the Opposition.

6. In response to paragraph 6, Applicant admits that through trademark Application Serial No. 86486142, Applicant seeks to register the designation SANDHILL UX as a trademark mark in International Class 042 for use in conjunction with "Design and consulting services related thereto in the field of user experience software; Design and development of computer software for others in the field of graphical user interfaces, on-line and off-line software user interfaces and experiences, and user interaction design.” Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 6 of the Opposition.
7. In response to Paragraph 7, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every allegation in paragraph 7 of the Opposition.
8. In response to Paragraph 8, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every allegation in paragraph 8 of the Opposition.
9. In response to Paragraph 9, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every allegation in paragraph 9 of the Opposition.

10. In response to Paragraph 10, this paragraph states legal conclusions of the Opposer, to which no answer is required. To the extent that a response is required, Applicant denies each and every allegation in paragraph 10 of the Opposition.

In response to the final unnumbered paragraph, Applicant denies each and every remaining allegation in the final unnumbered paragraph of the Opposition.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE FAILURE TO STATE A CLAIM

11. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE LACK OF STANDING

12. Opposer's claims are barred, in whole or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

THIRD AFFIRMATIVE DEFENSE NO INJURY OR DAMAGE

13. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's mark

FOURTH AFFIRMATIVE DEFENSE
NO BASIS

14. Opposer has no basis either in law or fact, to sustain an opposition of Applicant's mark.

FIFTH AFFIRMATIVE DEFENSE
LACK OF LIKLIHOOD OF CONFUSION

15. Applicant argues that Opposer does not own common law rights or any registered marks that would be confused with Applicant's mark in terms of sight, sound, meaning and commercial impression.

16. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark and has a distinct commercial impression from Opposer's claimed mark.

17. Applicant's mark does not create a likelihood of confusion among the relevant purchasing public that Applicant's products are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use of Applicant's mark create the likelihood that consumers will falsely believe that Applicant and Opposer are affiliated in any way.

SIXTH AFFIRMATIVE DEFENSE

18. Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;

2. That Applicant be granted further reasonable and appropriate relief.

Dated: August 28, 2015

Respectfully Submitted,

/s/ Chris Civil

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of APPLICANT’S ANSWER TO OPPOSER’S NOTICE OF OPPOSITION is being served by mailing a copy thereof, by United Parcel Service addressed to the following individuals, identified in the Notice of Opposition as the attorneys of record and correspondents on this 28th day of August, 2015:

TROY S KIRK
REMBOLT LUDTKE LLP
3 LANDMARK CENTRE
1128 LINCOLN MALL
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LINCOLN, NE 68508

and a courtesy copy via email to:

tkirk@remboltlawfirm.com
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/s/ Chris Civil

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