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

Proceeding	91222769
Party	Defendant Shree Dharmajivan Mission Private Foundation Charitable Trusttion Charitable Trust
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Submission	Answer
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Signature	/ Karl S. Sawyer, Jr. /
Date	08/18/2015
Attachments	Answer Opp No 9122769.pdf(2690400 bytes)

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

In the matters of U.S. Appln. Serial No. 86/408,934 filed Sept. 29, 2014, for SGVP GURUKUL PARIVAR USA and U.S. Appln. Serial No. 86/372,359 filed Aug. 20, 2014, for SHREE SWAMINARAYAN GURUKUL PRATISHTHANAM SGVP, each published May 12, 2015:

Swaminarayan Gurukul-USA,	)	
	)	
Opposer,	)	Opposition No. 91222769
	)	
v.	)	
	)	
Shree Dharmajivan Mission Private Foundation Charitable Trust,	)	
	)	
Applicant.	)	
	)	
	)	

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, Shree Dharmajivan Mission Private Foundation Charitable Trust ("Applicant"), for its answer and affirmative defenses to the Consolidated Notice of Opposition of Opposer, Swaminarayan Gurukul-USA ("Opposer"), responds to the correspondingly numbered paragraphs in Opposers's Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, denies the allegations of Paragraph 1.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and, therefore, denies the allegations of Paragraph 2.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies the allegations of Paragraph 3.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the allegations of Paragraph 4.

5. Applicant admits the existence of U.S. Reg. No. 3,305,365 (the '365 Registration) and that the '365 Registration speaks for itself as to the mark and stylized format thereof. Applicant is without knowledge or information sufficient to form a belief as to Opposer's claimed ownership of the '365 Registration and, therefore, denies the same. Any remaining aspects of paragraph 5 not admitted herein are denied.

6. Applicant admits the allegations of Paragraph 6.

7. Applicant admits that Exhibit A appears to be a printout of the "Trademark Status and Document Retrieval" ("TSDR") information from the USPTO website with regard to the '365 Registration.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, therefore, denies the allegations of Paragraph 8.

9. Applicant admits the existence of U.S. Appln. Ser. No. 86/385,399 (the '399 Application) and that the '399 Application speaks for itself as to the mark and identified services thereof. Applicant is without knowledge or information

sufficient to form a belief as to Opposer's claimed ownership of the '399 Application and, therefore, denies the same. Applicant admits that Exhibit B appears to be a printout of the TSDR information from the USPTO website with regard to the '399 Application. Any remaining aspects of paragraph 9 not admitted herein are denied.

10. Applicant admits the allegations of Paragraph 10.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, therefore, denies the allegations of Paragraph 11.

12. Applicant admits the existence of U.S. Appln. Ser. No. 86/385,402 (the '402 Application) and that the '402 Application speaks for itself as to the mark and identified services thereof. Applicant is without knowledge or information sufficient to form a belief as to Opposer's claimed ownership of the '402 Application and, therefore, denies the same. Applicant admits that Exhibit C appears to be a printout of the TSDR information from the USPTO website with regard to the '402 Application. Any remaining aspects of paragraph 12 not admitted herein are denied.

13. Applicant admits the allegations of Paragraph 13.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and, therefore, denies the allegations of Paragraph 14.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 and, therefore, denies the allegations of Paragraph 15.

16. Applicant admits the allegations of Paragraph 16.

17. Applicant admits the allegations of Paragraph 17.

18. Applicant admits the allegations of Paragraph 18.

19. Applicant admits the allegations of Paragraph 19.

20. Applicant denies the allegations of Paragraph 20.

21. Applicant denies the allegations of Paragraph 21.

22. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and, therefore, denies the allegations of Paragraph 22.

23. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and, therefore, denies the allegations of Paragraph 23.

24. Applicant denies the allegations of Paragraph 24.

25. Applicant admits that its opposed applications are without Opposer's consent or permission but denies that Opposer's consent or permission is required for the applications. Applicant admits that it was aware of the existence of Opposer at the time of filing of the opposed applications but denies that Opposer holds valid and enforceable rights in the alleged "Opposer's Marks".

26. Applicant denies the allegations of Paragraph 26.

27. Applicant denies the allegations of Paragraph 27

28. Applicant denies the allegations of Paragraph 28.

29. Applicant denies the allegations of Paragraph 29.

AFFIRMATIVE DEFENSES

First Defense

30. Applicant denies the material allegations of the Notice of Opposition not admitted in the Answer and demands strict proof thereof.

Second Defense

31. The Notice of Opposition fails to state a claim upon which relief can be granted.

Third Defense

32. The marks of Applicant's opposed applications are not likely to cause confusion, mistake or deception with any of "Opposer's Marks".

Fourth Defense

33. The entire word portion "SHREE SWAMINARAYAN GURUKUL" and "U.S.A." of the mark of Opposer's '365 Registration are generic or at least merely descriptive of the Opposer's services. Opposer has acknowledged the descriptiveness of the words "SHREE SWAMINARAYAN GURUKUL" and "U.S.A." by disclaimer thereof in the '365 Registration. The words "SHREE SWAMINARAYAN GURUKUL" and "U.S.A." have not become distinctive of the Opposer's services through Opposer's alleged use of the words.

Accordingly, Opposer has not developed a protectable trademark right in the words "SHREE SWAMINARAYAN GURUKUL" and "U.S.A.".

Fifth Defense

34. The entirety of the mark "SHREE SWAMINARAYAN GURUKUL U.S.A." of Opposer's '399 Application is generic or at least merely descriptive of the Opposer's services and Opposer has acknowledged the descriptiveness of the mark by amendment of the '399 Application to the Supplemental Register. The words "SHREE SWAMINARAYAN GURUKUL U.S.A." have not become distinctive of the Opposer's services through Opposer's alleged use of the words. Accordingly, Opposer has not developed a protectable trademark right in the term "SHREE SWAMINARAYAN GURUKUL U.S.A.".

Sixth Defense

35. The entirety of the mark "SWAMINARAYAN GURUKUL FAMILY U.S.A." of Opposer's '402 Application is generic or at least merely descriptive of the Opposer's services and Opposer has acknowledged the descriptiveness of the mark by amendment of the '402 Application to the Supplemental Register. The words "SWAMINARAYAN GURUKUL FAMILY U.S.A." have not become distinctive of the Opposer's services through Opposer's alleged use of the words. Accordingly, Opposer has not developed a protectable trademark right in the term "SWAMINARAYAN GURUKUL FAMILY U.S.A.".

Seventh Defense

36. Opposer has not suffered and is not likely to suffer any injury or damage as a result of Applicant's use and registration of the marks of Applicant's opposed applications.

WHEREFORE, Applicant respectfully prays that Opposer be denied a judgment that registration of Applicant's opposed marks will be damaging to Opposer and Applicant requests that the Board allow registration of each of Applicant's opposed marks.

Respectfully requested,

NELSON MULLINS RILEY & SCARBOROUGH, LLP

Date: August 18, 2015
Date

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CERTIFICATE OF SERVICE

I, Karl S. Sawyer, Jr., of the law offices of Nelson Mullins Riley & Scarborough LLP, attorney for Applicant, Shree Dharmajivan Mission Private Foundation Charitable Trust, do hereby certify that I have served counsel with a copy of the document hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document: ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Counsel Served: Christopher J. Day
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Scottsdale, AZ 85258

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August 18, 2015