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Filing date: **08/27/2015**

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

Proceeding	91222886
Party	Defendant Naturescape, Inc.
Correspondence Address	JOHN M. MANION RYAN KROMHOLZ & MANION, S.C. PO BOX 26618 MILWAUKEE, WI 53226-0618 rkmp@rkmiplaw.com
Submission	Answer
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Date	08/27/2015
Attachments	150827 Naturescape Opp Answer FINAL.pdf(25168 bytes)

2. For approximately 30 years, Opposers and its franchises have offered lawn care services under the marks NATURLAWN and NATURALAWN.

Answer: Answering Paragraph 2, Applicant lacks sufficient knowledge or information to form a belief as to the truth of those allegations and therefore denies them.

3. Opposers have invested tens of millions of dollars in advertising and promoting its services under the marks NATURLAWN and NATURALAWN. Opposers and its franchisees have earned hundreds of millions of dollars in revenues from services sold under the marks NATURLAWN and NATURALAWN.

Answer: Answering Paragraph 3, Applicant lacks sufficient knowledge or information to form a belief as to the truth of those allegations and therefore denies them.

4. Opposers own federal trademark registrations for NATURLAWN (Reg. No. 1,414,588) for “lawn care services” and NATURALAWN (Reg. No. 2,543,921) for “pest control services” and “lawn care services.” These registrations are incontestable.

Answer: Answering Paragraph 4, Applicant admits that, according to the United States Patent and Trademark Office (“USPTO”) records, Opposers are the owners of record of U.S. Trademark Registration Nos. 1,414,588 and 2,543,921. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 4, and therefore, denies them.

5. Consumers associate Opposers’ marks NATURLAWN and NATURALAWN as identifying lawn care services emanating exclusively from Opposers and its franchisees, and have done so for decades.

Answer: Answering Paragraph 5, Applicant lacks sufficient knowledge or information to form a belief as to the truth of those allegations and therefore denies them.

6. Applicant is a Wisconsin corporation located at S66 W16253 Chestnut Ridge Court Muskego, Wisconsin 53150.

Answer: Answering Paragraph 6, Applicant admits that Applicant is a Wisconsin corporation. Applicant denies the remaining allegations set forth in Paragraph 6.

7. On February 2, 2015, Applicant filed intent-to-use Application Serial No. 86/521,202 for NATURE'SLAWN for "Lawn care services, namely, insecticide spraying" in Class 037, and "Lawn care services, namely, fertilization, mowing, and landscape maintenance in the nature of yard and garden care services" in Class 044.

Answer: Answering Paragraph 7, Applicant admits the allegations thereof.

8. Applicant's NATURE'SLAWN mark is substantially similar to Opposers' NATURLAWN mark in sight, sound, meaning and overall commercial impression.

Answer: Answering Paragraph 8, Applicant denies each and every allegation contained therein.

9. Applicant's services and Opposers' services are identical and likely to be offered in the same channels of trade and to the same customers.

Answer: Answering Paragraph 9, Applicant denies each and every allegation contained therein.

10. Applicant's use and registration of NATURE'SLAWN is likely to cause confusion, deception, and/or mistake with Opposers' NATURLAWN and NATURALAWN marks.

Answer: Answering Paragraph 10, Applicant denies each and every allegation contained therein.

11. Applicant's use and registration of NATURE'SLAWN will interfere with Opposers' NATURLAWN and NATURALAWN marks, and damage Opposers, its business and the goodwill in its NATURLAWN and NATURALAWN marks.

Answer: Answering Paragraph 11, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

Applicant asserts that the following affirmative defenses bar Opposers' requested relief in their Notice of Opposition:

1. Opposers' Notice of Opposition fails to state any basis under the Lanham Act to sustain an opposition to registration of Applicant's mark.
2. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposers' services, nor will such use be thought by the public to be a use by Opposers or with Opposers' authorization or approval.
3. Applicant's mark is sufficiently distinct from Opposers' marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's services.

WHEREFORE, for at least the reasons stated above, Applicant respectfully prays that:

- A. The Board refuse to sustain the Opposition of Opposers;
- B. The Board find that there is no basis in fact to support the Opposition of Opposers;
- C. The Board dismiss this Opposition, with prejudice; and
- D. The Board grants such other and further relief as may be appropriate.

Respectfully submitted:

Date: August 27th, 2015

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served on Opposers' counsel in this case, by mailing said copy on 27 August 2015, via First Class Mail, postage prepaid to:

John J. Dabney
McDermott Will & Emery LLP
500 North Capitol Street, NW
The McDermott Building
Washington, D.C. 20001-1531

Dated this 27th day of August, 2015.

/Keith L. Reese-Kelley/
Keith L. Reese-Kelley