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

Proceeding	91224129
Party	Defendant DevOpsRockstars
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Date	11/06/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Take-Two Interactive Software, Inc.)
(Opposer))
)
v.)
)
DevOpsRockstars, LLC)
(Applicant))
)

Opposition No. 91224129
Serial Number 86491925

ANSWER TO OPPOSITION

Applicant DevOpsRockstars, LLC (“Applicant”), acting *pro se*, hereby answers the opposition filed by Take-Two Interactive (“Opposer”) as follows:

1. Applicant does not have sufficient information to admit or deny the allegations in paragraph 1, and effectively denies the allegations thereof.
2. Applicant denies that Opposer’s R and a star design is understood by consumers to stand for the word “Rockstar” and leaves Opposer to its proofs. Applicant does not have sufficient information to admit or deny the remaining allegations in paragraph 2, and effectively denies the allegations thereof.
3. Applicant does not have sufficient information to admit or deny the allegations in paragraph 3, and effectively denies the allegations thereof.
4. Applicant does not have sufficient information to admit or deny the allegations in paragraph 4, and effectively denies the allegations thereof.
5. Applicant does not have sufficient information to admit or deny the allegations in paragraph 5, and effectively denies the allegations thereof.
6. Admitted.

7. Applicant does not have sufficient information to admit or deny the allegations in paragraph 5, and effectively denies the allegations thereof.
8. Applicant does not have sufficient information to admit or deny the allegations in paragraph 5, and effectively denies the allegations thereof.
9. Applicant does not have sufficient information to admit or deny the allegations in paragraph 5, and effectively denies the allegations thereof.
10. Applicant does not have sufficient information to admit or deny the allegations in paragraph 5, and effectively denies the allegations thereof.
11. Admitted.
12. Admitted.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.

Affirmative Defenses and Amplification of Denials

1. Applicant is informed and believes that Opposer is not damaged or harmed by the use of Applicant's Mark by virtue of the fact that a substantial number of third-party registrations exist for marks containing the term "ROCKSTARS" or "ROCKSTAR" (including, but not limited to ROCKSTAR POWER SUITE, Ser. No. 85211470 for, *inter alia*, "computer software"), such that the implementation of this term is descriptive, or so commonly used that the public will look to other elements of the mark to distinguish the source of the goods or services.
2. Applicant is informed and believes that the Opposer's marks are weak due to the fact that they combine the commonly implemented term ROCKSTAR with highly descriptive or generic terms

(for example GAMES, WAREHOUSE, STUDIOS, or LOFT). As a result, applicant asserts that Opposer's marks are entitled to a limited scope of protection.

3. Applicant affirmatively pleads a genuine intent to use the applied for Mark in limited channels of trade, particularly in industrial markets, where the services specified as part of Applicant's Mark are not targeted towards consumers, and that by virtue of this restriction there is no likelihood of confusion with respect to Opposition. Consequently, even if the Board ultimately finds that Opposer is entitled to judgment with respect to Applicant's services as more broadly identified, Applicant would be entitled to a registration of applied for Mark with a restricted identification more accurately reflecting the nature of its services.
4. Applicant asserts that by virtue of the trade channels described above, and considering the nature of the services described in Application, that its customer base (*i.e.*, the relevant consuming public) is discriminatory and sophisticated. In particular, Applicant defends that the conditions under which sales of its specified services are made preclude likelihood of confusion. These include but are not limited to; complex decision-making units, relationships requiring sales engagements, the formation of contractual business associate agreements, formal statements of work, vendor selection processes, and specification-driven deliverables.
5. The lexical composition between Opposer's and Applicants marks are distinct and preclude a finding of likelihood of confusion. Specifically, the subset of Opposer's marks implementing the "ROCKSTAR" formative adhere to uniform characterization of this term holding a dominant position in the mark. Conversely, "ROCKSTARS" is implemented in Applicant's Mark as a suffix of a dominant root element, in turn forming a unique compound. When evaluating applied for Mark ("DEVOPSROCKSTARS") in its entirety, more weight should be given to "DEVOPS", as it is the dominant element of the Mark. Because the dominant portion of Applicant's and Opposer's marks differ dramatically, confusion is not likely.
6. None of Opposer's marks are similar in appearance to applied for Mark.
7. DEVOPSROCKSTARS does not sound similar to any of Opposer's marks.

8. The applied for Mark holds a different meaning than Opposer's marks when applied to the services specified in Application. Specifically, being a "rockstar" has well-known connotation for workers in the IT industry; it denotes an elite caliber of information technology professional and in applied for Mark functions as an element suggestive of this connotation. To this end, Applicant defends that Applicant's and Opposer's marks convey significantly different commercial impressions.
9. Opposer's and Applicant's marks are for unrelated goods and services notwithstanding the fact that both involve computer software.
10. None of the services specified in Application are in Opposer's logical zone of expansion.
11. None of the marks cited in Opposers claim, as individual marks or in any collective combination, are "widely recognized by the general consuming public of the United States as a designation of the source of the goods or services of the marks owner". Therefore, applicant asserts that Opposer's marks are not entitled to protection offered by the Trademark Dilution Revision Act of 2006.
12. Applicant's Mark is not sufficiently similar to any of Opposer's marks such that a consumer would conjure up any of Opposer's marks when confronted with applied for Mark. Therefore, blurring would not occur from the use of applied for Mark.
13. There are numerous third-party registrations implementing the ROCKSTAR formative in conjunction with a descriptive term that are used in commercial scale or that the public has become familiar with. By this virtue, the conditioning of consumers is impacted with respect to identifying Opposer's marks as a distinguishing source.
14. On information and belief, Opposer's use of "rockstar" is not substantially exclusive.
15. The services specified in applied for Mark are wholesome and would not harm the reputation of Opposer's marks.
16. DEVOPSROCKSTARS was conceived in good faith, with no intent to deceive, confuse, or otherwise create an association with Opposer's marks.

17. There may be additional affirmative defenses to the claims alleged by Opposer that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend its Answer to allege additional affirmative defenses in the event of discovery of additional information indicates they are appropriate.

PRAYER FOR RELIEF

WHEREFORE, DevOpsRockstars, LLC respectfully prays that:

1. Opposition be dismissed with prejudice;
2. A certificate of registration be issued; and
3. The Board takes any additional action it deems just and proper

DATED: November 6, 2015

Respectfully submitted,

/Dan Sullivan/
Dan Sullivan
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CERTIFICATE OF SERVICE

This certifies that on November 6, 2015, a true copy of the foregoing Answer to Opposition was served via first class mail, postage prepaid, to the Attorney of Opposer at the address of record listed by the USPTO:

Andrea L. Calvaruso, Esq.
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/Dan Sullivan/
Dan Sullivan