

ESTTA Tracking number: **ESTTA716217**

Filing date: **12/22/2015**

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

Proceeding	91224362
Party	Defendant BRUNELLE KEN J, PIPER DANNY R
Correspondence Address	BRUNELLE KEN J PO Box 58321 Seattle, WA 98138-1321 volume12lob@gmail.com
Submission	Answer
Filer's Name	Ken J Brunelle
Filer's e-mail	volume12lob@gmail.com
Signature	/kjb/
Date	12/22/2015
Attachments	NFL.pdf(483553 bytes) Certificate of serviceNFL.pdf(42415 bytes)

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

In the Matter of Trademark Application Serial No. 86/568,687

Published in the Official Gazette on June 16, 2015

FOOTBALL NORTHWEST LLC and

NFL PROPERTIES LLC,

Opposers,

v.

Opposition No. 91224362

KEN J. BRUNELLE and

DANNY R. PIPER,

Applicants.

ANSWER TO NOTICE OF OPPOSITION

Applicants KEN J. BRUNELLE and DANNY R. PIPER (“Applicants”), hereby reply to the numbered grounds for opposition set forth in FOOTBALL NORTHWEST LLC and NFL PROPERTIES LLC (“Opposers”) Notice of Opposition. Applicants deny each and every allegation contained in the Opposition except those expressly admitted below.

1. Answering paragraph 1 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.

2. Answering paragraph 2 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.

3. Answering paragraph 3 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
4. Answering paragraph 4 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
5. Answering paragraph 5 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
6. Answering paragraph 6 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
7. Answering paragraph 7 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
8. Answering paragraph 8 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
9. Answering paragraph 9 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
10. Answering paragraph 10 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.

11. Answering paragraph 11 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
12. Answering paragraph 12 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
13. Answering paragraph 13 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.
14. Answering paragraph 14 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.
15. Answering paragraph 15 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.
16. Answering paragraph 16 of the Notice of Opposition: Upon information and belief, Applicants admit the allegations.
17. Answering paragraph 17 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
18. Answering paragraph 18 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
19. Answering paragraph 19 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.

20. Answering paragraph 20 of the Notice of Opposition: Applicants deny the allegations.
21. Answering paragraph 21 of the Notice of Opposition: Applicants do not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly deny the allegations.
22. Answering paragraph 22 of the Notice of Opposition: Applicants deny the allegations.
23. Answering paragraph 23 of the Notice of Opposition: Applicants deny the allegations.
24. Answering paragraph 24 of the Notice of Opposition: Applicants deny the allegations.
25. Answering paragraph 25 of the Notice of Opposition: Applicants deny the allegations.
26. Answering paragraph 25 of the Notice of Opposition: Applicants deny the allegations.

AFFIRMATIVE DEFENSES

1. In regards to paragraph 21 of the Notice of Opposition: Since 2008, a variety of colors and fonts have been utilized in the development of the VOLUME 12 brand. As depicted below, the VOLUME 12 name has been displayed in an assortment of colors. In addition, because of the wide range of color schemes offered to the public today, color is not claimed as a feature of the mark.



2. Regarding paragraph 22 of the Notice of Opposition: As shown below, the stylization and description of the Applicants “12” in the present application “VOLUME 12” and the Opposers stand alone “12” are substantially different.

The description entered in the Applicants application Serial No. 86/568,687 is as follows: The mark consists of the word VOLUME with a stylized “12”. The “12” includes a distinct outline in which the outer sides of the outline are straight with sharp edges and the inner portion of the outline has a continuous rounded, smooth and curved fashion.

The description entered in the Opposers Registration Serial No. 4,692,528 is as follows: The mark consists of the numeral “1” with a distinctive angular top and a slanted angle bottom followed by the numeral “2” with an upper curved top corner with a straight lower edge.



3. Regarding paragraph 23 of the Notice of Opposition: The “VOLUME 12” brand was established in 2008, many years prior to breaking the world record for crowd noise. The following registrations constitute conclusive evidence of Applicants exclusive right to use said marks in commerce in connection with the goods and services specified in the registrations. The Registered Trademarks include Registration Serial No.’s: 3,990,655; 3,975,548; 4,580,384; 4,601,724; 4,013,998; and 4,013,999.

4. For many years, Applicants and their licensees and sponsors have sold and offered for sale goods and services that incorporate a “12” design which is almost identical to the “12” shown above in Applicants application Serial No. 86/568,687. These products have become recognizable in the United States through substantial expenditures of time, effort and other resources. A few (of many) product examples are shown below. The label on the flag packaging (left) displays a “12” which is almost identical to the “12” in the Applicants application. The VOLUME 12 mark on the base of the scarf (middle) is almost identical to the stylized mark in the Applicants application. The display stand and the cell phone cases (right) utilize a “12” which is almost identical to the Applicants application.



5. For many years, Applicants and their licensees and sponsors have displayed signage that incorporate a “12” design which is almost identical to the “12” shown above in Applicants application Serial No. 86/568,687. A couple (of many) examples are shown below. The signage on the left was utilized at many events open to the public. The VOLUME 12 mark on the signage is almost identical to the stylized mark in the Applicants application. The “12” on the signage displayed on the wall of the VOLUME 12 store has a “12” which is almost identical to the “12” in the Applicants application.



PRAYER FOR RELIEF

WHEREFORE, Applicants believe that Opposers have not been damaged by products previously or presently offered and will not be damaged by the registration of Application Serial No. 86/568,687. Besides the filing of this opposition, the Opposers have never sent a cease and desist letter to the Applicants in regards to the Applicants trademarks, products or signage utilizing a “12” that is almost identical to the “12” displayed in the Applicants present application. Applicants therefore request judgment:

1. Dismissing Opposers Notice of Opposition and allowing Applicants application to proceed to registration.

DATED this 22th day of December, 2015.

Respectfully submitted,

Ken J Brunelle / Applicant /kjb/

Danny R. Piper / Applicant /drp/

VOLUME 12 LLC

P.O. Box 58321 Seattle, WA. 98138

(206) 330-9895

volume12lob@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that the Answer to the Notice of Opposition has been sent via first class mail, postage pre-paid on this 22rd day of December 2015 to:

Kristin H. Altoff / Morgan, Lewis & Bockius LLP
71111 Pennsylvania Ave., N.W.
Washington, D.C. 20004

/Ken J. Brunelle/