

ESTTA Tracking number: **ESTTA722251**

Filing date: **01/22/2016**

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

Proceeding	91225404
Party	Defendant Elisee Ndenga
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Submission	Answer
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Date	01/22/2016
Attachments	Answer to Notice of Opposition.pdf(106040 bytes)

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

XOOM CORPORATION,

Opposer,

v.

Opposition No. 91225404

ELISEE NDENGA,

Applicant.

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

In response to the Notice of Opposition (hereafter “Notice”) filed by XOOM CORPORATION (hereafter “Opposer”) on December 16, 2015, the Applicant, ELISEE NDENGA (hereafter “Applicant”), answers the Notice identified above as follows:

1. In response to the allegations of paragraph 1 of the Notice, the Applicant is without knowledge.
2. In response to the allegations of paragraph 2 of the Notice, the Applicant is without knowledge.
3. In response to the allegations of paragraph 3 of the Notice, the Applicant is without knowledge.
4. In response to the allegations of paragraph 4 of the Notice, the Applicant is without knowledge.
5. In response to the allegations of paragraph 5 of the Notice, the Applicant is without knowledge.

6. In response to the allegations of paragraph 6 of the Notice, the Applicant is without knowledge.
7. In response to the allegations of paragraph 7 of the Notice, the Applicant is without knowledge.
8. In response to the allegations of paragraph 8 of the Notice, the Applicant is without knowledge.
9. Applicant admits that he is the owner of Application Serial No. 86/536,775 for XOOMIA for use with “Computer software for healthcare management for use in the healthcare field by Individuals, Families, Businesses, Pharmacies” in International Class 009. Any and all other allegations contained within paragraph 9 of the Notice are denied.
10. Applicant admits that he is the owner of Application Serial No. 86/536,775 for XOOMIA, which was filed on February 17, 2015. Any and all other allegations contained within paragraph 10 of the Notice are denied.

COUNT I
LIKELIHOOD OF CONFUSION

11. Applicant reincorporates paragraphs 1 through 10 as if fully set forth herein.
12. Applicant denies the allegations of paragraph 12 of the Notice.
13. Applicant denies the allegations of paragraph 13 of the Notice.
14. Applicant denies the allegations of paragraph 14 of the Notice.
15. In response to the allegations of paragraph 15 of the Notice, the Applicant is without knowledge.
16. Applicant denies the allegations of paragraph 16 of the Notice.

COUNT II
LACK OF USE AS OF THE FILING DATE OF THE APPLICATION

17. Applicant reincorporates paragraphs 1 through 10 as if fully set forth herein.
18. Applicant denies the allegations of paragraph 18 of the Notice.
19. Applicant denies the allegations of paragraph 19 of the Notice.
20. Applicant denies the allegations of paragraph 20 of the Notice.
21. Applicant denies the allegations of paragraph 21 of the Notice.
22. Applicant denies the allegations of paragraph 22 of the Notice.

Affirmative Defenses

In further answer to the Notice, the Applicant asserts that:

First Affirmative Defense

23. Opposer's Notice fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

Second Affirmative Defense

24. Upon information and belief, Opposer has no priority of use to the XOOMIA mark.

Third Affirmative Defense

25. There is no similarity between Applicant's XOOMIA mark and Opposer's marks as to appearance. Specifically, the Applicant's mark is for XOOMIA rather than XOOM. All of Opposer's cited mark lack the additional letters "IA."

Fourth Affirmative Defense

26. All of the Opposer's cited marks are used with some form of money transfer services or for information on facilitating money transfers, whereas the Applicant's mark is specifically used for healthcare management services delivered via computer software. None of Opposer's marks are used for healthcare management services. The type of

industries to which each respective owner caters are extremely disparate. Accordingly, the services provided by both the Applicant and the Opposer are not inherently similar, and as such, consumer confusion is incredibly unlikely.

Fifth Affirmative Defense

27. Purchasers of goods sold along with the relevant marks are careful and sophisticated, thus making any confusion or mistake amongst potential overlapping consumers highly unlikely.

Sixth Affirmative Defense

28. The respective trademarks, as appears on each party's respective goods and services, do not create the same or overall commercial impression when viewed separately by the ordinary consumer.

Seventh Affirmative Defense

29. Ordinary Consumers would not confuse or conclude that the parties' products share a common source or affiliation or connection.

Eighth Affirmative Defense

30. On information and belief, Opposer's goods are more expensive than that of the Applicant; thus, Consumers are unlikely to purchase Opposer's goods supposing they derive from Applicant or vice versa.

Ninth Affirmative Defense

31. Opposer has no examples of any actual confusion amongst consumers with regards to Applicant's XOOMIA mark and Opposer's marks.

Applicant reserves the right to amend this Answer to assert any additional affirmative defenses arising from any applicable facts or law that may be revealed during discovery.

Relief Requested

WHEREFORE, the Applicant asks that this Opposition proceeding be dismissed forthwith.

By: /Francis John Ciaramella/
Francis John Ciaramella, Esq.
Florida Bar No. 111927

and

By: /Rick Ruz/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document has been served via first class mail, postage prepaid, on the following:

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By: /Francis John Ciaramella/
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and

By: /Rick Ruz/
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Dated: January 22, 2016