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

Proceeding	91226185
Party	Defendant Kind Distribution LLC
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**IN THE U.S. PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TWENTIETH CENTURY FOX FILM
CORPORATION,

Opposer,

v.

KIND DISTRIBUTION LLC,

Applicant.

E-FILING

Opposition No.: 91226185

Application No.: 86603079

ANSWER

In the matter of the above-identified Opposition No. 91226185, Kind Distribution LLC (“Applicant”) hereby answers the allegations set forth in the Notice of Opposition (“Notice of Opposition”) filed by Twentieth Century Fox Film Corp. (“Opposer”).

With respect to the allegations set forth in the non-numbered paragraph at the beginning of the Notice of Opposition, Applicant denies that Opposer “is being and will be damaged” by registration of Applicant’s mark. Applicant is without information sufficient to form a belief as to the remaining allegations of the non-numbered paragraph, and accordingly denies the allegations.

With respect to the allegations set forth in the numbered paragraphs of the Notice of Opposition:

1. Applicant is without information sufficient to form a belief as to the allegations of paragraph 1, and accordingly denies the allegations.
2. Applicant is without information sufficient to form a belief as to the allegations of paragraph 2, and accordingly denies the allegations.

3. Applicant admits that Fox is the owner of certain U.S. trademark registrations for the mark PLANET OF THE APES and denies the remaining allegations in paragraph 3.

4. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 4.

5. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 5.

6. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES marks, and accordingly denies the allegations in paragraph 6.

7. Applicant is without information sufficient to form a belief as to Opposer's planned use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 7.

8. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 8.

9. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 9.

10. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 10.

11. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 11.

12. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 12.

13. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 13.

14. Applicant admits that Fox is the owner of certain trademark registrations for PLANET OF THE APES, is without information sufficient to form a belief as to the validity of Opposer's putative PLANET OF THE APES mark(s), and denies the remaining allegations in paragraph 14.

15. Applicant is without information sufficient to form a belief as to the validity of Opposer's putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 15.

16. Applicant is without information sufficient to form a belief as to the allegation in paragraph 16, and accordingly denies the allegations.

17. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 17.

18. Applicant admits that it is a limited liability company organized in Texas having an address of 2028 E. Ben White Blvd., #240-4201, Austin, Texas 78741.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Applicant admits that the Second PLANET OF THE VAPES Application was approved and published for opposition and Opposer did not oppose said application.

25. Admitted.

26. Admitted.

27. Admitted.

28. Applicant repeats and realleges each and every response set forth above.

29. Denied.

30. Applicant admits that its mark differs from the textual component of Opposer's putative mark(s) by one letter and denies the remaining allegations in paragraph 30.

31. Denied.

32. Applicant repeats and realleges each and every response set forth above.

33. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s) and the public perception thereof, and accordingly denies the allegations in paragraph 33.

34. Applicant is without information sufficient to form a belief as to Opposer's use or nonuse of its putative PLANET OF THE APES mark(s), and accordingly denies the allegations in paragraph 34.

35. Applicant is without information sufficient to form a belief as to the allegations in paragraph 35, and accordingly denies the allegations.

36. Denied.

37. Applicant repeats and realleges each and every response set forth above.

38. Denied.

39. Admitted.

40. Admitted.

41. Applicant admits that this proceeding involves identical parties or their privies with those in Opposition No. 91203417 and denies the remaining allegations in paragraph 41.

42. Denied.

Applicant denies the allegations set forth in the non-numbered “WHEREFORE” paragraph in the Notice of Opposition and any allegation contained in the Notice of Opposition to which Applicant has not responded specifically.

AFFIRMATIVE DEFENSES

1. Opposer has not alleged grounds sufficient to sustain its burden of proof and the Notice of Opposition therefore fails to state a claim upon which relief can be granted.

2. The opposed application is not directed to services that are likely to be confused with Opposer’s goods and services, resulting in Opposer’s lack of standing to bring this opposition proceeding.

3. Opposer cannot allege that it possesses exclusive rights to use and registration of any mark containing the words PLANET OF THE, resulting in Opposer’s lack of standing to bring this opposition proceeding.

4. Applicant reserves the right to assert additional affirmative defenses that may

become known.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,

Kind Distribution LLC

Dated: August 15, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this August 15, 2016, a true and correct copy of the foregoing ANSWER was served on the following via first class mail:

Linda K. McLeod
KELLY IP LLP
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/s/ David E. Weslow .