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

Proceeding	91227976
Party	Defendant Comic Book Classrooms LLC
Correspondence Address	Betsy Proffitt Holland & Hart LLP ATTENTION: TRADEMARK DOCKETING , P.O. BOX 8749 Denver, CO 80201 UNITED STATES becooperstein@hollandhart.com, docket@hollandhart.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Beth E. Cooperstein
Filer's e-mail	becooperstein@hollandhart.com, docket@hollandhart.com, egquackenbush@hollandhart.com
Signature	/Beth E. Cooperstein/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

San Diego Comic Convention, Opposer, v. Comic Book Classrooms LLC, Applicant.	Opposition No.: 91227976 Mark: DENVER COMIC CON & design Serial No.: 86/369,144
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FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant Comic Book Classroom (“Applicant”), by and through its counsel, responds as follows to the Notice of Opposition:

[Unnumbered Paragraphs]. Applicant denies that Opposer will be damaged by registration of Applicant’s DENVER COMIC CON & design mark as set forth in Application Serial No. 86/369,144 (the “Application”). Applicant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of the unnumbered paragraphs and therefore denies them.

1. Applicant admits that Comic Book Classrooms LLC, identified as a Colorado Limited liability company, is the applicant of record for Application Serial No. 86/369,144. Applicant further admits that such entity did not exist at the time the application was filed, and to its knowledge, has never existed. Applicant states that non-existent entity Comic Book Classrooms LLC was mistakenly identified as the owner of record as the result of a clerical error. The correct owner is Comic Book Classroom, a Colorado nonprofit corporation.

2. Applicant admits that it filed Application Serial No. 86/369,144, and states that the Application speaks for itself. To the extent Paragraph 2 contains allegations inconsistent with the Application, Applicant denies them.

3. Applicant states that the USPTO records for Registration No. 4165481 speak for themselves. Applicant denies the allegations of Paragraph 3 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant denies the remaining allegations contained in Paragraph 3.

4. Applicant states that the USPTO records for the registrations and applications set forth in Paragraph 4 speak for themselves. Applicant denies the allegations of Paragraph 4 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant is without information or knowledge sufficient to form a belief as to the truth of the contents of the USPTO records or the remaining allegations of Paragraph 4 and therefore denies them.

5. Applicant states that the USPTO records for the registrations set forth in Paragraph 5 speak for themselves. Applicant denies the allegations of Paragraph 5 to the extent they are different from or claim more than what is set forth in the USPTO records. Applicant is without information or knowledge sufficient to form a belief as to the truth of the contents of the USPTO records or the remaining allegations of Paragraph 5 and therefore denies them.

6. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies them.

7. Applicant denies the allegations contained in Paragraph 7.

8. Applicant admits that it seeks to register the mark set forth in the Application but denies the remaining allegations contained in Paragraph 8.

9. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 9 and therefore denies them.

10. In response to Paragraph 10, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 9 of this Answer, as if fully set forth herein.

11. Applicant admits that its use and registration of the mark set forth in the Application are without Opposer's consent, because no consent is required. Applicant denies the remaining allegations contained in Paragraph 11.

12. Applicant admits that is DENVER COMIC CON mark incorporates the generic wording COMIC CON. Applicant denies the allegations contained in Paragraph 12.

13. Applicant denies the allegations contained in Paragraph 13.

14. Applicant denies the allegations contained in Paragraph 14.

15. Applicant admits that registration of the mark set forth in the Application would provide it with prima facie exclusive rights therein. Applicant denies the remaining allegations contained in Paragraph 15.

16. The allegations contained in Paragraph 16 are a legal conclusion to which no response is required.

17. Applicant denies that registration of the mark set forth in the Application will damage Opposer. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 17 and therefore denies them.

18. In response to Paragraph 18, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 17 of this Answer, as if fully set forth herein

19. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 19 and therefore denies them.

20. Applicant admits that its use of the mark set forth in the Application is without Opposer's consent, because no consent is required. Applicant denies the remaining allegations contained in Paragraph 20.

21. Applicant admits that its DENVER COMIC CON mark incorporates the generic wording COMIC CON. Applicant denies the allegations contained in Paragraph 21.

22. Applicant denies the allegations contained in Paragraph 22.

23. Applicant denies the allegations contained in Paragraph 23.

24. Applicant denies the allegations contained in Paragraph 24.

25. The allegations contained in Paragraph 25 are a legal conclusion to which no response is required.

26. Applicant denies that registration of the mark set forth in the Application will damage Opposer. Applicant lacks sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 26 and therefore denies them.

27. In response to Paragraph 27, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 26 of this Answer, as if fully set forth herein.

28. Applicant denies the allegations contained in Paragraph 28.

29. In response to Paragraph 29, Applicant repeats each admission, denial and denial of sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraphs 1 through 28 of this Answer, as if fully set forth herein.

30. Applicant admits that Comic Book Classrooms LLC, identified as a Colorado limited liability company, is the applicant of record for Application Serial No. 86/369,144. Applicant further admits that such entity did not exist at the time the application was filed, and to its knowledge, has never existed. Applicant states that non-existent entity Comic Book Classrooms LLC was mistakenly identified as the owner of record as the result of a clerical error. The correct owner is Comic Book Classroom, a Colorado nonprofit corporation. Applicant denies the remaining allegations contained in Paragraph 30 and states that pursuant to 37 CFR § 2.71 and Trademark Manual of Examining Procedure §§ 1201.02(c)(3) and (7), this is a correctable error and is not fatal to the application.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted because Opposer does not have any rights in the generic wording COMIC CON. Opposer therefore cannot assert a valid claim and no relief may be granted.

SECOND DEFENSE

The words “COMIC CON” or “COMIC-CON” are generic terms and are incapable of functioning as a source identifier for Opposer’s goods and services.

THIRD DEFENSE

Even if not found to be generic, the words “COMIC CON” or “COMIC-CON” are descriptive and incapable of functioning as a source identifier for Opposer’s goods and services, and have not acquired distinctiveness with respect to Opposer’s goods and services.

FOURTH DEFENSE

Opposer's Marks as a whole are merely descriptive, and incapable of functioning as a source identifier for Opposer's goods and services.

FIFTH DEFENSE

Opposer's claims are barred by the doctrine of laches, because Applicant's prior registrations for the mark DENVER COMIC CON, Reg. Nos. 4527316 and 4736871, which cover the same or substantially similar goods as the Application, were published on November 23, 2013 and November 26, 2013 and issued on May 6, 2014 and May 12, 2015, respectively. Opposer did not take any action against these applications when published, despite having constructive and actual knowledge of the applications as well as Applicant's, and its predecessor in interest's, use of the DENVER COMIC CON mark since at least 2012. In reliance on this inaction by Opposer, Applicant has invested a great deal of resources into its the development and promotion of its DENVER COMIC CON marks. Yet, almost three years later, Opposer now seeks to oppose registration of the identical wording Applicant previously registered, for overlapping and substantially similar goods. Applicant would therefore be extremely prejudiced by refusal of the Application.

SIXTH DEFENSE

Opposer's claims are barred by the doctrine of estoppel, because Applicant relied on Opposer's inaction with respect to its use and registration of DENVER COMIC CON over the last several years to expend significant resources developing and promoting its DENVER COMIC CON brand. In particular, Opposer wrote to Applicant in early November 2014 regarding a possible partnership between the entities, which Applicant respectfully declined. Thereafter, Opposer took no action against Applicant, despite actual knowledge of Applicant's

use of DENVER COMIC CON dating back to at least 2012 (and its prior registration of the mark) until filing the instant opposition against the Application, almost two years later.

Applicant would therefore be extremely prejudiced by refusal of the Application.

SEVENTH DEFENSE

Opposer's claims fail because there is no likelihood of confusion between the parties' marks. The only similarity between the parties' marks is the shared generic words "COMIC CON."

EIGHTH DEFENSE

Opposer's claims are barred, in whole or in part, by the doctrines of waiver and/or abandonment through Opposer's failure to adequately police the use of its alleged trademark. There are currently over 15 applications for COMIC CON marks pending with the United States Patent and Trademark Office, owned by different entities and individuals who claim first use of the marks sometimes going back a decade. These applications include, but are not limited to, applications for: RHODE ISLAND COMIC CON, BOSTON COMIC CON, JEKYLL COMIC CON and SARATOGA COMIC CON. In addition, upon information and belief, numerous additional organizations across the United States that have been using the generic term COMIC CON in connection with comic convention services and related goods and services for decades without objection from Opposer. As such, Opposer's rights in the phrase "COMIC CON," to the extent such rights ever existed, have been abandoned.

At the time this Answer to the Notice of Opposition is filed, all possible facts supporting all possible affirmative defenses may not yet have been discovered. Applicant therefore reserves

its rights to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Applicant respectfully requests that the Board dismiss this opposition and permit Applicant's DENVER COMIC CON & design mark to mature to registration on the Principal Register of the United States Patent and Trademark Office.

Dated: August 17, 2016

Respectfully submitted,

/Beth E. Cooperstein/

Beth E. Cooperstein

HOLLAND & HART LLP

P.O. Box 8749

Denver, Colorado 80201

Phone: (303) 295-8018

Facsimile: (303) 975-5379

becooperstein@hollandhart.com

docket@hollandhart.com

ATTORNEYS FOR COMIC BOOK CLASSROOM

