

ESTTA Tracking number: **ESTTA758693**

Filing date: **07/17/2016**

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

Proceeding	91228461
Party	Defendant HEADBALL RECORDS LLC
Correspondence Address	DANIEL S. POLLEY Daniel S Polley P A 7251 W Palmetto Park Rd Ste 202 Boca Raton, FL 33433-3487  dan@danpolley.com;betty@danpolley.com;beatrizbernal@bellsouth.net
Submission	Answer
Filer's Name	Daniel S. Polley
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Signature	/Daniel S. Polley/
Date	07/17/2016
Attachments	Logo only Answer - 91228461.pdf(77123 bytes )

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

In the Matter of Application Serial No. 86/714,576  
Mark: Design Only  
Application Filing Date: August 4, 2015

Skullcandy, Inc.	)	Opposition No. 91228461
	)	
Opposer,	)	
	)	
v.	)	
	)	
Headball Records, LLC	)	
	)	
Applicant.	)	
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**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES FOR  
OPPOSITION PROCEEDING NO. 91228461**

Applicant Headball Records, LLC (“Applicant”) for its Answer and Affirmative Defenses, states as follows:

Preamble Paragraph. Applicant denies that Opposer Skullcandy, Inc. (“Opposer”) will be damaged by the registration of Applicant’s mark shown in 86/714,576 (“the ‘576 Application”) and denies that Opposer has any valid grounds for opposing the ‘576 Application. Applicant denies that Opposer has any actual legal or factual basis for opposing the ‘576 Application and Applicant also denies that Opposer is entitled to any of the relief he seeks in the Notice of Opposition. Applicant is without sufficient knowledge regarding Opposer’s entity type or principal place of business.

Paragraph 1. Applicant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Notice of Opposition, and consequently Applicant denies the same, leaving Opposer to strict proof thereof.

Paragraph 2. Applicant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 2 of the Notice of Opposition, and consequently Applicant denies the same, leaving Opposer to strict proof thereof.

Paragraph 3. Applicant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 3 of the Notice of Opposition, and consequently Applicant denies the same, leaving Opposer to strict proof thereof.

Paragraph 4. Applicant acknowledges that Opposer has attached copies of certificate of registrations as alleged exhibit to the Notice of Opposition. Applicant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Notice of Opposition or the information printed on the referenced attached registrations, and consequently Applicant denies the same, leaving Opposer to strict proof thereof.

Paragraph 5. Applicant denies that Opposer has any rights relevant to Applicant's mark or Applicant's goods or services. Applicant also objects to Opposer's characterization of Applicant's goods and services. Applicant does admit that it lawfully filed the '576 Application on August 4, 2015.

Paragraph 6. Denied.

Paragraph 7. Denied.

Paragraph 8. Denied.

Paragraph 9. Denied.

Opposition WHEREFORE Paragraph. Denied that Opposer will be harmed by registration of Applicant's mark.

To the extent not specifically admitted above, Applicant denies each and every allegation, statement or comment contained in the Notice of Opposition, and also denies that Opposer is entitled to any of the relief sought in the Notice of Opposition.

WHEREFORE, Applicant respectfully prays:

- (1) That the Board dismissed the Notice of Opposition in its entirety in favor of Applicant, with prejudice, on all of Opposer's allegations and alleged claims;
- (2) That the Board find that Opposer has brought this Opposition proceeding in bad faith and with unclean hands;
- (3) That the Board provide or award Applicant any other relief that it deems just.

#### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition, in whole or as to specific allegations, fails to state any claim upon which relief can be granted
2. The Notice of Opposition fails to state any valid basis for opposing registration of Applicant's mark.
3. That Opposer has brought this Opposition in bad faith and therefore Opposer's alleged claims are barred.
4. That Opposer has come to this Opposition proceeding with unclean hands and therefore Opposer's alleged claims are barred.
5. Opposer's claims are barred, in whole or in part, because Opposer's alleged marks are invalid and unenforceable.
6. Opposer's claims are barred in whole or in part by reason of other party's prior and current use of marks similar to Opposer's alleged marks.

7. The respective marks are so dissimilar that any chance of alleged confusion between the respective marks is remote.

8. The respective marks are so dissimilar that any claims of likelihood of confusion by Opposer are highly suspect and evidence the bad faith nature of Opposer' Opposition filing.

9. Applicant reserves the right to additional defenses and/or counterclaims as investigation and discovery proceed in this action.

WHEREFORE, Applicant respectfully requests that Opposition No. 91228461 be dismissed in its entirety with prejudice.

Dated this 17th day of July, 2016.

Respectfully submitted,

Attorneys for Applicant

/Daniel S. Polley/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17h day of July 2016, a true copy of the foregoing APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES FOR OPPOSITION PROCEEDING NO. 91228461 was served via First Class U.S. Mail, addressed as follows:

Christopher M. Dolan, Esq.  
Barnes & Thornburg  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606

Executed on July 17, 2016.

/Daniel S. Polley/  
Daniel S. Polley, Reg. No. 34,902