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

Proceeding	91228601
Party	Defendant Visceral Technologies, LLC
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Date	08/01/2016
Attachments	checkedinanswer.pdf(1669195 bytes)

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

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LINKEDIN CORPORATION,

Opposer,

-against-

VISCERAL TECHNOLOGIES, LLC,

Applicant.

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OPPOSITION NO. 91228601

SERIAL NO. 86/768,908

MARK: CHECKEDIN

ANSWER

Visceral Technologies, LLC, for its answer to the Opposition herein, responds as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1, and states that Opposer does not allege that any of its goods or services are for the purpose of "connect[ing] travelers," which is the purpose of Applicant's mobile application as stated in the Application at issue in this proceeding.

2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2.

3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3, respectfully refers the Board to the referenced registrations for their contents, and states that none of Opposer's cited registrations cover applications offered for the purpose of "connect[ing] travelers," which is the purpose of Applicant's application as stated in the Application at issue in this proceeding. Applicant further states that all of Opposer's claimed services as recited in paragraph 3 are, to the contrary, for

purposes that obviate the need for travel, such as "hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via the Internet" (Reg. Nos. 3,967641 and 3,971,640).

4. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the factual allegations contained in paragraph 4, and states that the alleged and undocumented use of Opposer's services by Opposer's customers to "share travel information, identify and connect with others in a given destination, and to schedule and arrange meetings and events related to their travel" is reflected nowhere in the voluminous registration history cited by Opposer, and would, moreover, if accepted as a basis of sustaining this Opposition, expand Opposer's asserted monopoly rights to cover every product or service connected with any communication ever made by any LinkedIn customer anywhere about any topic. Applicant further states that the overbreadth of Opposer's claimed rights is evident in its attempt to preclude the use of any past-tense word with "the formative 'In'," see paragraph 10 below. Opposer's contention is absurd on its face: according to Opposer's logic, no party should be able to register, say, BAKEDIN for an app related to baking, because "Baked" is in the past tense, it is combined with "In," and Opposer's users may sometimes share baking-related information among themselves using Opposer's services, or indeed merely use Opposer's services to "connect with others" who happen to be sitting in a bakery. The honorable and highly trained Examining Attorney rightly rejected any such argument and concluded, after careful review of Applicant's submissions, that no confusion was likely.

5. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5.

6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the factual allegations contained in paragraph 7, and denies the legal conclusion that Opposer's marks are famous as alleged.

8. Admits the allegations contained in paragraph 8.

9. Admits the allegations contained in paragraph 9.

10. Denies the allegations contained in paragraph 10, and states that Applicant's CHECKEDIN mark differs significantly from Opposer's LINKEDIN marks as to sight, sound, meaning, and overall commercial impression, particularly because the dominant portions of the marks at issue, CHECKED- and LINKED- respectively, are utterly dissimilar as to sight, sound, meaning and overall commercial impression. Applicant further states that the sole similarity of these terms alleged by Opposer, *i.e.*, that both are "in the past tense," has never been recognized by the Board or the courts as a cognizable basis for actionable similarity.

11. Denies the allegations contained in paragraph 11, and restates its response from paragraphs 3 and 4 above as to the dissimilarity of the parties' respective goods and services.

12. Paragraph 12 sets forth a conclusion of law as to which no response is required, and to the extent it sets forth factual allegations, Applicant denies.

13. Denies the allegations contained in paragraph 13, and states that Applicant had heard of the Opposer's service prior to the time Applicant selected the marks that are the subject of this Opposition.

14. Admits the allegations contained in paragraph 14.

15. Applicant respectfully refers the Board to the cited registrations of Opposer and the cited application of Applicant for the filing and use dates set forth thereon.

FIRST GROUND FOR OPPOSITION

16. Repeats and realleges the responses set forth in paragraphs 1-15 above.

17. Denies the allegations contained in paragraph 17.

18. Denies the allegations contained in paragraph 18.

19. Admits the allegations contained in paragraph 19.

20. Denies the allegations contained in paragraph 20, and states that LinkedIn has no control over the nature and quality of the goods offered by Applicant under Applicant's marks, nor should it.

21. Denies the allegations contained in paragraph 21.

SECOND GROUND FOR OPPOSITION

22. Repeats and realleges the responses set forth in paragraphs 1-21 above.

23. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 23.

24. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 24.

25. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 25.

26. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 26.

27. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 27.

28. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 28.

29. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 29.

30. Denies knowledge or information sufficient form a belief as to the truth or falsity of the allegations set forth in paragraph 30.

31. Denies the allegations set forth in paragraph 31.

32. Denies the allegations set forth in paragraph 32.

33. Admits that Opposer seeks the relief described in paragraph 33, but denies that Opposer is entitled to such relief.

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a cause of action.

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CONCLUSION

WHEREFORE, Applicant Visceral Technologies LLC respectfully requests that the Opposition be denied in all respects.

Visceral Technologies LLC hereby appoints the following attorneys to defend this proceeding and transact all business in the Patent and Trademark Office connected therewith: Robert W. Clarida, and the attorneys of Reitler, Kailas and Rosenblatt LLC.

Dated: New York, New York
August 1, 2016

Respectfully submitted,

REITLER KAILAS &
ROSENBLATT LLC

By: _____
Robert W. Clarida
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New York, New York 10022
(212) 209-3044
Attorneys for Applicant

TO:

COOLEY
Attention: Janet L. Cullum, Esq.
1114 Ave. of the Americas
New York, New York 10036
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER** was sent by first class mail postage pre-paid to Opposer's Correspondent of Record, this 1st day of August, 2016, to:

COOLEY
Attention: Janet L. Cullum, Esq.
1114 Ave. of the Americas
New York, New York 10036
Attorneys for Opposer

Robert W. Clarida