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10-07-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

Attorney Docket: 06399.8067



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

ROLLER DERBY SKATE CORPORATION)
 Petitioner,)
)
 v.)
)
 BAUER NIKE HOCKEY INCORPORATED)
 Registrant.)

Cancellation No. 92040955

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TRADEMARK TRIAL AND APPEAL BOARD

ANSWER

Bauer Nike Hockey Inc. ("Bauer Nike") submits this Answer to the Petition for Cancellation filed by Roller Derby Skate Corporation.

1. Bauer Nike admits that the mark shown in Registration No. 2,551,672 consists of the design of an ice hockey blade chassis with an opening in the center of the blade chassis, which is shown on the certificate of registration for Registration No. 2,551,672. The documents appended to the Petition for Cancellation are not marked with any exhibit numbers, tabs, or designations, so Bauer Nike cannot admit or deny the statements with regard to the document allegedly attached to the Petition for Cancellation as Exhibit A. Bauer Nike admits, however, that an unmarked copy of a printout of Registration No. 2,551,672 from the U.S. Patent & Trademark Office online database was attached to the Petition for Cancellation.

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2. Bauer Nike is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2, and therefore denies them.

3. Bauer Nike is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 3, and therefore denies them.

4. Bauer Nike is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4, and therefore denies them. Additionally, the documents appended to the Petition for Cancellation are not marked with any exhibit numbers, tabs, or designations, so Bauer Nike cannot admit or deny the statements with regard to the document allegedly attached to the Petition for Cancellation as Exhibit B. Bauer Nike admits, however, that three unmarked copies of depictions ice hockey skates were attached to the Petition for Cancellation.

5. Bauer Nike is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 5, and therefore denies them.

6. Bauer Nike repeats and incorporates by reference its answers to Paragraphs 1-5.

7. Bauer Nike admits that it obtained through assignment U.S. Patent No. 3,934,892 (“the ‘892 patent”), which expired on January 27, 1993. Because the documents appended to the Petition for Cancellation are not marked with any exhibit numbers, tabs, or designations, Bauer Nike cannot admit or deny the statements with

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regard to the document allegedly attached to the Petition for Cancellation as Exhibit C. Bauer Nike admits, however, that an unmarked copy of the '892 patent was attached to the Petition for Cancellation.

8. Admitted.

9. Bauer Nike admits that the '892 patent discloses in Figure 11 an ice skate blade having an aperture in the body of the skate. Bauer Nike admits that some of the features of the design shown in its registration may serve some useful, *de facto* functional purpose. Bauer Nike denies that its mark, as whole, is *de jure* functional.

10. Denied.

11. Denied.

12. Bauer Nike repeats and incorporates by reference its answers to Paragraphs 1-11.

13. Bauer Nike admits that in an Office Action Response filed on December 7, 2000, in response to an inquiry from the Examining Attorney, it stated "Applicant's mark is not the subject of a U.S. design or utility patent," and affirmatively noted "Applicant did own Canadian Patent No. 984,422, which is now expired." Bauer Nike denies all remaining allegations of Paragraph 13.

14. Bauer Nike's failure to disclose the '892 patent was the result of inadvertence and was not intentional. Bauer Nike denies all remaining allegations of Paragraph 14.

15. Denied.

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16. Bauer Nike repeats and incorporates by reference its answers to Paragraphs 1-15.

17. Denied.

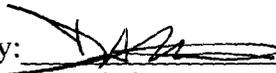
18. Denied.

19. To the extent this Paragraph is understood, Bauer Nike denies that the continued registration of its mark will "impair" Petitioner's continued use and sale of non-infringing ice hockey skates and blade chassis.

WHEREFORE, Bauer Nike prays that this petition be dismissed and that its Registration No. 2,551,672 be maintained.

Respectfully submitted,

Date: October 7, 2002

By: 

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **ANSWER** was served via United States first-class mail, postage prepaid, this 7th day of October 2002, upon counsel for Petitioner at the following address:

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