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

Proceeding	92048815
Party	Defendant DEAN RHON AND DEBBIE ROHN
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Date	03/11/2008
Attachments	Answer to Petition for Cancellation.pdf (7 pages)(166621 bytes)

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

In the matter of Trademark Registration No. 3,290,738

For the mark	GUPPIE & Design
Int'l Class	25
Date registered	September 11, 2007

_____/

BLOWFISH LLC,

Petitioner,

Cancellation No. 92048815

DEAN ROHN and DEBBIE ROHN,

Registrants.

_____/

ANSWER TO PETITION FOR CANCELLATION

Dean Rohn and Debbie Rohn ("Registrants") answer the Petition for Cancellation filed by Blowfish LLC ("Petitioner") as follows:

COUNT I

CANCELLATION BASED ON ALLEGED FRAUD ON THE PATENT AND TRADEMARK OFFICE

1. On or about September 29, 2006, Petitioner filed an application to federally register the trademark GUPPY LOVE in connection with bottoms; footwear; jeans; tops in International Class 25, which Application was subsequently assigned Serial No. 77/010,497 ("Petitioner's Application"). A copy of Petitioner's Application is annexed hereto and identified as Exhibit 1.

ANSWER:

As stated, Registrants admit that it appears that Petitioner filed the above-referenced application in complete disregard for Registrants' prior filed application, and

without contacting Registrants in any manner known to Registrants, but otherwise leave Petitioner to its proofs.

2. On February 17, 2007, the Trademark Office issued an Office Action suspending prosecution of Petitioner's Application pending registration or abandonment of the then-pending Application which subsequently matured into the Subject Registration on the basis of alleged likelihood of confusion between the Subject Mark and the mark covered by Petitioner's Application, GUPPY LOVE. A copy of the February 17, 2007 Office Action is annexed hereto as Exhibit 2.

ANSWER:

As stated, Registrants admit that it appears that Petitioner filed the above-referenced application in complete disregard for Registrants' prior filed application, and without contacting Registrants in any manner known to Registrants, and that the Trademark Office suspended prosecution of the application for "bottoms; footwear; jeans; tops in International Class 25," but otherwise leave Petitioner to its proofs.

3. Upon information and belief, the Subject Registration was fraudulently obtained.

ANSWER:

Denied.

4. Specifically, upon information and belief, on or about April 10, 2006, when Registrants, through their counsel, filed the use-based Application which subsequently matured into the Subject Registration (the "Subject Application"), Registrants falsely represented to the U.S. Patent and Trademark Office that the Subject Mark was being used in commerce in connection with all the goods identified in the Subject Application.

ANSWER:

As stated, Registrants deny that any material false representation was made, intentionally or otherwise, to the United States Patent and Trademark Office, and leave Petitioner to its proofs.

5. Upon information and belief, at the time this false representation was made, Registrants knew or should have known that the Subject Mark was not being used in commerce with all of the goods identified in the Subject Application. Specifically, upon information and belief, at the time this representation was made, the Subject Mark was not being used in connection with shoes.

ANSWER:

As stated, Registrants deny that any material false representation was made, intentionally or otherwise, to the United States Patent and Trademark Office, and leave Petitioner to its proofs.

6. Upon information and belief, the Subject Mark was never used on shoes.

ANSWER:

As stated, Registrants deny that any material false representation was made, intentionally or otherwise, to the United States Patent and Trademark Office, and leave Petitioner to its proofs.

7. Upon information and belief, Registrants' false representation was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to register the Subject Mark, and reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, grant said registration.

ANSWER:

Denied.

8. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the continued existence of the Subject Registration on the Principal Register has damaged and will continue to damage Petitioner.

ANSWER:

Denied.

9. For at least the reasons stated herein, the continued registration of the Subject Registration is damaging and will continue to damage Petitioner.

ANSWER:

Denied.

COUNT II

ALLEGED NON-USE IN COMMERCE

10. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

ANSWER:

Registrants repeat and reallege each and every allegation set forth in the proceeding paragraphs as though fully set forth herein.

11. Upon information and belief, the Subject Mark was not in use in commerce in connection with all of the goods covered by the Subject Application when the Subject Application was filed. Specifically, upon information and belief, on or about April 10, 2006, when Registrants, through their counsel, filed the Subject Application, the Subject Mark was not being used in commerce in connection with shoes.

ANSWER:

As stated, Registrants deny that any material false representation was made to the United States Patent and Trademark Office, and leaves Petitioner to its proofs.

12. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the continued existence of the Subject Registration on the Principal Register for shoes covered by the Subject Registration which were not, at the time of the filing of the Subject Application, in use in commerce has damaged and will continue to damage Petitioner.

ANSWER:

Denied.

13. For at least the reasons stated herein, the continued registration of the Subject Registration for shoes has damaged and will continue to damage Petitioner.

ANSWER:

Denied.

COUNT III

ALLEGED ABANDONMENT

14. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

ANSWER:

Registrants repeat and reallege each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

15. Upon information and belief, Registrants have ceased use of the Subject Mark in connection with shoes.

ANSWER:

As stated, Registrants are not currently using the mark in commerce on shoes, but deny that any material false representation was made to the United States Patent and Trademark Office, intentionally or otherwise, and leave Petitioner to its proofs.

16. As a result, Registrant has abandoned the Subject Mark with respect to shoes.

ANSWER:

As stated, Registrants deny that any material false representation was made to the United States Patent and Trademark Office, intentionally or otherwise, that no abandonment is believed to have occurred, and leave Petitioner to its proofs.

17. Since Petitioner's Application has been potentially refused registration based on a perceived likelihood of confusion with the Subject Registration, and the potential refusal should become actual now that the Subject Registration has issued, the continued existence of the Subject Registration on the Principal Register for shoes has damaged and will continue to damage Petitioner.

ANSWER:

Denied.

18. For at least the reasons stated herein, the continued registration of the Subject Registration for shoes is damaging and will continue to damage Petitioner.

ANSWER:

Denied.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim against Registrants upon which relief can be granted.

2. The Petition fails to assert standing on behalf of Petitioner due to the lack of any damage to Petitioner with respect to its application with defined goods of "bottoms; footwear; jeans; tops in International Class 25."

3. The Petition fails to state a claim since no material false representation was made by Registrants to the United States Patent and Trademark Office, intentionally or otherwise, and none have been asserted.

4. The Petition fails to state a claim since any actions alleged are unintentional or inadvertent, and any such actions or assertions are excusable under prevailing law.

5. If perceived that Registrants' use on "shoes" is not enough to meet the

requirements of trademark usage, then, in the alternative, Registrants request that "shoes" be deleted from the description of goods in an amended registration.

6. Registrants reserve the right to present further affirmative defenses as they are determined.

WHEREFORE, having fully answered the Petition for Cancellation herein, Registrants request that this Request for Cancellation be dismissed, or, in the alternative, that Registrants' be permitted to amend the Registration at issue to cure any perceived defects therein.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

Date: March 11, 2008

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CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted, in PDF format tot he Trademark Trial and Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) on March 11, 2008.

Nicole M. Thurman

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Petition for Cancellation has been served on counsel for Petitioner, Blowfish LLC, by mailing said copy on March 11, 2008, via first class mail.

Nicole M. Thurman