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

Proceeding	92052838
Party	Defendant Tom and Judy Bourn dba Dust T. Hog Enterprises
Correspondence Address	TOM AND JUDY BOURN DBA DUST T. HOG ENTERPRISES 411 COUNTY ROAD BB WOODVILLE, WI 54028 UNITED STATES tom@dustthog.com
Submission	Answer
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Date	09/10/2010
Attachments	DustTHogAnswer.pdf (7 pages)(92407 bytes)

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

BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS
Opposer,

v. Opposition No. 92052838

TOM AND JUDY BOURN

Registrant.

REGISTRANT TOM AND JUDY BOURN'S ANSWER AND AFFIRMATIVE DEFENSES TO THE OPPOSTION

Registrant, TOM AND JUDY BOURN, hereinafter Registrant, files the following Answer and Affirmative Defenses to the subject Cancellation and states:

1. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Petition to Cancel, which therefore stand denied.
2. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Petition to Cancel, which therefore stand denied.
3. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3 of the Petition to Cancel, which therefore stand denied.
4. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 4 of the Petition to Cancel, which therefore stand denied. In regard to petitioner's registration listing in paragraph 4 of the Petition to Cancel, Applicant is without knowledge of information sufficient to form a belief as to the accuracy of the information contained in that listing.
5. Registrant admits that the University of Arkansas' athletic teams have competed in athletic events in the United States and have appeared in nationwide television broadcasts. Applicant is

without knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 5 of the Petition to Cancel, which therefore stand denied.

6. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Petition to Cancel, which therefore stand denied.
7. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 7 of the Petition to Cancel, which therefore stand denied.
8. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Petition to Cancel, which therefore stand denied.
9. Registrant admits the allegations set forth in paragraph 9 of the Petition to Cancel.
10. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 10 of the Petition to Cancel, which therefore stand denied.
11. Registrant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 11 of the Petition to Cancel, which therefore stand denied.
12. Registrant denies the allegations contained in Paragraph 12 of the Petition to Cancel.
13. Registrant denies the allegations contained in Paragraph 13 of the Petition to Cancel.
14. Registrant denies the allegations contained in Paragraph 14 of the Petition to Cancel.
15. Registrant admits the allegations contained in Paragraph 15 of the Petition to Cancel. Registrant ceased sales and marketing of T-shirts bearing their registered mark as of _ 2010.
16. Registrant denies the allegations contained in Paragraph 16 of the Petition to Cancel.
17. Registrant denies the allegations contained in Paragraph 17 of the Petition to Cancel.
18. Registrant denies the allegations contained in Paragraph 18 of the Petition to Cancel.
19. Registrant denies the allegations contained in Paragraph 19 of the Petition to Cancel.
20. Registrant denies the allegations contained in Paragraph 20 of the Petition to Cancel.
21. Registrant denies the allegations contained in Paragraph 21 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

1. Registrant's use of the mark DUST T. HOG (and the associated graphic depiction of a hog) is in good faith without any intention to trade upon the reputation and goodwill of Opposer.
2. There is no likelihood of confusion, mistake or deception because, inter alia, Registrant's mark and the pleaded marks of the Opposer are not confusingly similar due to distinct differences in goods and services.
3. Among the registrations pleaded by Opposer, none of the Registration numbers contain any class 9 goods, and the educational goods and services, goods and services associated with the University's athletic teams and other goods associated with promoting team and school spirit would never be confused with respiratory protective dust masks. Registrant's mark DUST T. HOG (and associated graphic depiction of a hog) is therefore readily distinguishable in terms of goods, from any of Opposer's registered marks.
4. On information and belief, none of the registrations pleaded by Opposer contain any class 9 goods, so they are totally irrelevant to Applicant's right to register in class 9.
5. There is no likelihood of confusion, mistake or deception because, inter alia, Registrant's mark and the pleaded marks of Opposer are not confusingly similar due to significant differences in customer base.
6. Opposer's marks are used on a broad range of goods which have in common that they are goods commonly sold in conjunction with a University's school spirit, athletic teams, athletic programs, athletic events, including, but not limited to educational services, sports events, musical performances in conjunction with the University or University's sports events, T-shirts, sports shirts, sweatshirts, sweat pants, jerseys, caps, hats neckties, socks, decals, bumper stickers, pencils, coasters, postcards, folders, notebooks, wallets, duffel bags, umbrellas, license plates etc. All of the goods associated with Opposer's pleaded marks are goods one would reasonably

anticipate to find sold in a student store on any University Campus. The consumers buying these goods would be students at University, students aspiring to attend the University, family of such students, alumni of the University, and other fans of that University's sports teams. Registrant's goods, dust masks, are very unlikely to be sold alongside these goods, and rather would be sold in the context of other industrial related goods, at an industrial supply store and always labeled as a "Dust T. Hog" product, not bearing the graphic of the hog kicking up dust alone. Therefore, on information and belief, consumers who are likely to buy the Opposer's goods and participate and be familiar with Opposer's services are not substantially the same, any overlap of consumers is insignificant, and the context of such a purchase is substantially different from the consumers likely to buy and context of the purchase of the Registrant's goods.

7. There is no likelihood of confusion, mistake or deception because, inter alia, Registrant's mark and the pleaded marks of Opposer are not confusingly similar due to significant differences in separate channels of commerce.
8. There is no likelihood of confusion, mistake or deception because, inter alia, Registrant's mark is a cartoonish and whimsical hand drawing of a hog, done in a relatively amateurish and simple fashion, kicking up dust around it, which is meant to evoke the dust that the Registrant's protective dust masks will protect a consumer from. The pleaded marks of Opposer are more lifelike and professional representations of their razorback, have a more photographic quality to them, and have a threatening or dangerous rather than cartoonish or whimsical appearance to them which is appropriate to a sports team that desires to unnerve its opponent. The pleaded marks of Opposer and Registrant's mark are visually dissimilar and therefore not confusingly similar.

9. The pleaded marks of Opposer and Registrant's mark share certain design search codes relevant to hogs, boars, pigs. However, Opposer's registrations do not afford it a monopoly over all images with related design search codes. The Opposer does not have a monopoly over trademark depictions of hogs, boars, pigs or any manifestation of the swine family.
10. Persons familiar with the Opposer's RAZORBACK marks would not be likely to buy Registrant's goods believing them to originate with or be endorsed or sponsored by the University because their familiarity with said marks would make them well able to discern the differences between the University's marks and other depictions of boars, hogs and pigs, which are readily distinguishable from Opposer's marks and of which there are many in the world.
11. Persons familiar with the Opposer's RAZORBACK marks would not be likely to buy Registrant's goods believing them to originate with or be endorsed or sponsored by the University because their familiarity with said marks would make them well able to discern the difference between a depiction of a hog used in conjunction with the unfamiliar "Dust T. Hog" on dust masks and the Opposer's RAZORBACK design mark used with the University's name or the word mark "RAZORBACK."
12. The marks of the Opposer and the mark of the Registrant are sufficiently different in their overall commercial impression so that confusion as to the source of goods and/or services is unlikely to result.
13. Because the marks are readily distinguishable from one another, any defect, objection or fault found with the goods offered under Registrant's mark would in no way be associated with nor reflect upon nor injure the reputation of the University's goods and services.
14. There is no likelihood of confusion, mistake or deception because, inter alia, Registrant's mark and the pleaded marks of Opposer are not confusingly similar due to significant differences in.

15. There is no likelihood of confusion, mistake or deception because Registrant's use of its mark in no way points to the University of Arkansas, its athletic program or the Unviersity's RAZORBACK marks, nor does it suggest any connection in the minds of the public because they are visually dissimilar, the word marks are completely different, the marks are on entirely different goods, and such goods are sold in different channels of commerce to a different customer base.
16. Registrant use of its mark is not confusingly similar, nor does it suggest a connection with the Opposer's marks, and therefore cannot in any way dilute the Opposer's marks.
17. As a result, Opposer cannot base any similarity between Opposer's marks RAZORBACK and Applicant's mark DUST T. HOG on likelihood of confusion.

WHEREFORE, Registrant denies that Petitioner will be damaged and further denies there is any likelihood of confusion.

Accordingly, Registrant prays for judgment dismissing the Petition to Cancel with prejudice, and that Petitioner be denied all relief requested in its Petition for Cancellation.

Dated this 10th day of September, 2010.

Respectfully submitted,

TOM AND JUDY BOURN
411 County Road BB
Woodville, WI 54028
United States

PROOF OF SERVICE

I, the undersigned, certify that a true and correct copy of this Answer to Notice of Cancellation was served by United States first-class mail, postage prepaid, this 10th day of September 2010, on Petitioner at the following address:

Williams & Anderson PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
(501) 396-8461

Tom & Judy Bourn
DBA Dust T. Hog Enterprises
411 County Road BB
Woodville, WI 54028

By: /Tom Bourn/
Tom Bourn, Owner