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

In the Matter of Application Serial No. 75/767,732
for the mark "COCO BONGO HOUSE OF ROCK AND POP and Design"
Filed on August 3, 1999
Published for Opposition in the Official Gazette
of October 17, 2000



03-10-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

ESTEFAN ENTERPRISES, INC.,)	
)	
Opposer,)	
vs.)	Opposition No. 121,980
)	
BONGO, S.A., de C.V.,)	
)	
Applicant.)	
)	

ANSWER

COMES NOW the Applicant, Bongo, S.A., de C.V. ("Applicant"), and files its Answer and Affirmative Defenses to Opposer, Estefan Enterprises, Inc.'s ("Opposer") Amended Notice of Opposition ("Amended Notice of Opposition"), as follows:

1. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 1 of the Amended Notice of Opposition, and therefore denies same.

2. Applicant admits the allegations of Paragraph 2 of the Amended Notice of Opposition.

3. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 3 of the Amended Notice of Opposition, and therefore denies same.

4. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 4 of the Amended Notice of Opposition, and therefore denies same.

5. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 5 of the Amended Notice of Opposition, and therefore denies same.

6. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 6 of the Amended Notice of Opposition, and therefore denies same.

7. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 7 of the Amended Notice of Opposition, and therefore denies same.

8. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 8 of the Amended Notice of Opposition, and therefore denies same.

9. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 9 of the Amended Notice of Opposition, and therefore denies same.

10. Applicant is without knowledge sufficient to form a belief as to the allegations contained in paragraph 10 of the Amended Notice of Opposition, and therefore denies same.

11. Applicant admits that it has filed an application to register the mark "COCO BONGO HOUSE OF ROCK & POP and Design" for use in connection with "discotheques". Applicant admits that the mark was published for opposition in the Official Gazette on October 17, 2000 at page TM 269. Applicant admits that the filing basis for the application is pursuant to section 44(e) of the Lanham Act, 15 U.S.C. §1126(e). Applicant denies the remaining allegations of Paragraph 11 of the Amended Notice of Opposition.

12. Applicant admits that it filed an application in Mexico on February 19, 1998 and filed its application in the United States on August 3, 1999. Applicant notes that footnote 1 of Paragraph 12 of the Amended Notice of Opposition was stricken pursuant to the Board's Order of February 5, 2004, page 4, and therefore the allegations contained therein are irrelevant.

13. Applicant admits that Applicant's "COCO BONGO HOUSE OF ROCK & POP" discotheque features music. Applicant is without knowledge sufficient to form a belief as to the allegation that said music is consistent with Opposer's definition of the terms "pop music and/or Latin-themed music and dancing", and therefore denies same.

14. Applicant denies the allegations contained in Paragraph 14 of the Amended Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of the Amended Notice of Opposition.

16. Applicant denies the allegations contained in Paragraph 16 of the Amended Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Amended Notice of Opposition.

18. Applicant denies the allegations contained in Paragraph 18 of the Amended Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Amended Notice of Opposition.

20. Applicant admits that if Applicant is granted the registration herein opposed, it would thereby obtain at least a

prima facie exclusive right to the use of the mark "COCO BONGO HOUSE OF ROCK & POP and Design". Applicant denies that said registration would be a source of damage and injury to Opposer. Applicant denies the remaining allegations of Paragraph 20 of the Amended Notice of Opposition.

21. Applicant denies the allegations contained in the WHEREFORE clause of the Notice of Opposition.

22. Applicant denies any and all allegations of the Notice of Opposition not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. The Amended Notice of Opposition fails to state a claim upon which relief may be granted.

2. Opposer lacks standing to oppose.

3. Applicant maintains senior rights in the "COCO BONGO HOUSE OF ROCK & POP and Design" mark as applied for, as well as its numerous related marks, including, without limitation the mark "COCO BONGO", Registration No. 2,347,247.

4. Applicant's "COCO BONGO HOUSE OF ROCK & POP and Design" goods and services and Opposer's mark(s) have co-existed without any known instances of actual confusion.

5. Opposer has had actual knowledge of Applicant's use of "COCO BONGO HOUSE OF ROCK & POP and Design" for many years, but has taken no action to object thereto, which inaction Applicant has relied upon, such that Opposer's action is barred by laches.

6. Opposer has not and could not suffer any damage by reason

of Applicant's registration of "COCO BONGO HOUSE OF ROCK & POP and Design" since, there is no likelihood of confusion.

7. Applicant has used its mark in the United States and such no abandonment has occurred.

8. Applicant maintains superior rights to the mark "COCO BONGO HOUSE OF ROCK & POP and Design" under the "well-known" and "famous marks" doctrine.

9. Applicant maintains superior rights to the mark "COCO BONGO HOUSE OF ROCK & POP and Design" under the application of 15 U.S.C. 1126(b) and (h), and the Paris Convention for the Protection of Industrial Property, Article 6bis.

10. Opposer has failed to join an indispensable party.


11. Any application or registration for which Opposer will or could rely is void.

12. Any application or registration for which Opposer will or could rely is abandoned.

13. Any trademarks rights upon which Opposer will or could rely have been abandoned.

WHEREFORE, Applicant prays that the Opposition be dismissed with prejudice.

Dated: March 8, 2003

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via United States mail, postage pre-paid this 8th day of March, 2004:

Karen L. Stetson, Esq.
BROAD AND CASSEL, P.A.,
201 South Biscayne Boulevard, Suite 3000
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Respectfully submitted,

By: David A. Gast
David A. Gast
Florida Bar No. 176,567

CERTIFICATE OF MAILING

I HEREBY CERTIFY that an original and one copy were deposited by United States Postal Service as first class mail in an envelope addressed to the following this 8th day of March, 2004:

Commissioner for Trademarks
Attn: T.T.A.B., "Box TTAB"
2900 Crystal Drive
Arlington, Virginia 22202-3514

Respectfully submitted,

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