

TAB

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

In the matter of trademark application REDWHALE SOFTWARE
Serial No 78/044,952

In the matter of trademark application REDWHALE SOFTWARE (& Design)
Serial No 78/045,023

Opposition Number: 152,233

WHALE COMMUNICATIONS LTD
Opposer,

v.

REDWHALE SOFTWARE CORPORATION
Applicant



06-16-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

**RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S RESPONSE
TO OPPOSER'S NOTICE OF OPPOSITION**

Whale Communications LTD ("Opposer") has filed a Motion to Strike the response to the Opposer's Notice of Opposition that RedWhale Software Corporation ("Applicant" or "RedWhale") filed on April 25th, 2003. RedWhale respectfully requests that the Board denies the motion to strike based on the following arguments.

1. Contrary to the Opposer's assertions, the Applicant's Response to the Opposer's Notice of Opposition contains no additional facts and simply denies point by point the allegations of the Opposer.
2. Paragraphs (1), (2), and (3) of the Applicant's Response to the Opposer's Notice of Opposition directly deny with argumentation the assertion by the Opposer in its Notice of Opposition that "[Opposer] and Applicant also sell software products with identical, related and/or overlapping applications". This allegation is shown by the Applicant in said paragraphs (1), (2), and (3) to be false.

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TRADEMARK TRIAL AND APPEAL BOARD

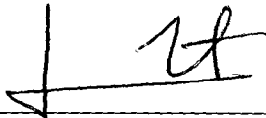
3. Paragraph (4) of the Applicant's Response to the Opposer's Notice of Opposition directly denies with argumentation the assertion by the Opposer in its Notice of Opposition that "[Opposer] and Applicant also target the same customers". This allegation is shown by the Applicant in said paragraph (4) to be false.
4. Paragraphs (5) and (6) of the Applicant's Response to the Opposer's Notice of Opposition directly deny with argumentation the assertion by the Opposer in its Notice of Opposition that "The Applications are visually, aurally, and connotatively similar to [Opposer's] Marks". This allegation is shown by the Applicant in said paragraphs (5) and (6) to be false.
5. Paragraph (7) of the Applicant's Response to the Opposer's Notice of Opposition directly denies the assertion by the Opposer in its Notice of Opposition that "Registration of the Applications therefore is likely to cause confusion or mistake with the [Opposer's] Marks".
6. Paragraph (8) of the Applicant's Response to the Opposer's Notice of Opposition directly denies the assertion by the Opposer in its Notice of Opposition that "The grant of Registration of the Applicant [Marks] would create statutory rights in Applicant ...and would result in detriment and great damage to Opposer".

Therefore, based on all these arguments, the Applicant respectfully requests the Board to deny the Motion to Strike by the Opposer. The Applicant also respectfully requests that the Board, as it has itself stated previously in this case, rule on the basis of the merits of the Notice of Opposition; merits that to this point have been shown by the Applicant to be nonexistent.

Note Relating to the Timing of this Response

The Applicant wishes to notify the Board that it learned of the Motion to Strike in question by phone conversation with the staff of the Board on June 10, 2003. The Applicant has no record of being served with the Motion to Strike via First-Class Mail from the Opposer. As a consequence, the Applicant was unable to respond to the Motion to Strike until that date, and is now producing this response within 72 hours after first learning of the existence of the Motion to Strike. Therefore, the Applicant respectfully requests that the Board accepts this response to the Motion to Strike as submitted in a timely manner.

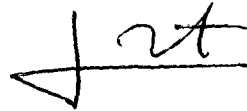
Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AP', written over a horizontal line.

Angel Puerta
RedWhale Software
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PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S RESPONSE TO OPPOSER'S NOTICE OF OPPOSITION** was served upon the Opposer by depositing a copy of same with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Paula J. Krasny, Baker & McKenzie, One Prudential Plaza, Suite 3500, 130 East Randolph Drive, Chicago, Illinois 60601 on this 13th day of June, 2003.



Angel Puerta

CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing **RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S RESPONSE TO OPPOSER'S NOTICE OF OPPOSITION** and two additional copies are being deposited with Federal Express as courier service, prepaid, in an envelope addressed to The Trademark Trial and Appeal Board, Box TTAB No Fee, Commissioner for Trademarks, 2900 Crystal Drive, South Tower, Suite 9B40, Arlington Virginia 22202-3513 on this 13th day of June, 2003.



Angel Puerta