ESTTA Tracking number: **ESTTA30781**

Filing date: **04/18/2005**

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

Proceeding	91164417
Party	Defendant Tribal Motor Works, LLC Tribal Motor Works, LLC 2440 Aero Park Drive Traverse City, MI 49684
Correspondence Address	ENRICO SCHAEFER SMITH & JOHNSON, P.C. PO BOX 705 TRAVERSE CITY, MI 49685-0705
Submission	Answer
Filer's Name	Mary C. Bonnema
Filer's e-mail	mcb@mcgarrybair.com
Signature	/marycbonnema/
Date	04/18/2005
Attachments	g0165564.pdf (7 pages)

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

In the matter of trademark application Serial No.:	76/541,236
Filed:	August 19, 2003
For the Mark:	TRIBAL MOTORWORKS
Published in the Official Gazette on:	January 4, 2005

TRIBAL SPORTSWEAR, INC.,

Opposer,

v.

TRIBAL MOTOR WORKS, LLC,

Applicant.
_____/

Opposition No.: 91164417

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

Applicant Tribal Motor Works, LLC ("Applicant"), by and through its attorneys, McGarry Bair PC, hereby answers the Notice of Opposition dated March 7, 2005, filed by Opposer Tribal Sportswear, Inc. ("Opposer"), as follows:

Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth regarding Opposer's address and location.

Opposer alleges that it will be damaged by the registration of Applicant's Trademark Application Serial No. 76/541,236 for the mark TRIBAL MOTORWORKS covering "clothing and apparel, namely t-shirts, sweatshirts, collared shirts, pants, jackets, hats and caps for men, women and children" in Class 25. Applicant denies that Opposer will be damaged by Applicant's Application Serial No. 76/541,236 for the mark TRIBAL MOTORWORKS (the "TRIBAL MOTORWORKS Mark").

Applicant now responds to each allegation of the Notice of Opposition below:

1. Opposer is the owner of all right, title and interest in United States Trademark Registration No. 1,843,013, registered July 5, 1994, on the Principal Register for the trademark TRIBAL, covering "men's, ladies and children's clothing; namely, woven and knits shirts, jeans, sweatshirts, pants, skirts, shorts, jumpsuits and jackets," in International Class 25. (See Exhibit A, attached hereto).

Applicant's Answer: Applicant admits that, according to the records of the U.S. Patent and Trademark Office's TARR database, Opposer is listed as the current owner of U.S. Registration No. 1,843,013 for the mark TRIBAL, by way of assignment from an individual. As to all remaining allegations, Applicant denies knowledge or information sufficient to form a belief as to the truth thereof and leaves Opposer to its proofs.

2. Opposer manufactures and markets in the United States and beyond a wide variety of clothing items under its TRIBAL mark.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and leaves Opposer to its proofs.

3. Opposer has continuously used its distinctive TRIBAL mark since at least as early as July 24, 1992, long before Applicant's filing date or any date of first use which Applicant could rely on for Applicant's mark.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and leaves Opposer to its proofs.

4. Through extensive and continuous use, Opposer has acquired a significant and valuable interest in its TRIBAL mark for its goods. This interest will be injured by Applicant's use of a confusingly similar mark on goods that are so closely related to those offered by Opposer, over which Opposer has no control.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and leaves Opposer to its proofs. In further answer, Applicant states that no likelihood of confusion exists between Opposer's TRIBAL mark and Applicant's TRIBAL MOTORWORKS Mark.

5. Opposer has expended considerable time, money and effort in advertising and promoting its TRIBAL mark, its goods sold under the mark, and in developing substantial and exclusive goodwill and reputation in connection with the term TRIBAL and the goods with which the TRIBAL mark is used.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and leaves Opposer to its proofs.

6. As a result of these expenditures, combined with substantial sales of quality goods under the TRIBAL mark, the relevant consuming public has come to recognize TRIBAL as favorably distinguishing Opposer's goods from those of others.

Applicant's Answer: Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and leaves Opposer to its proofs.

7. Applicant's use and registration of TRIBAL MOTORWORKS in connection with clothing will cause Opposer injury because such use is likely to cause confusion and/or mistake by wrongly leading persons to believe that such Applicant's goods are provided by, sponsored by, or somehow associated with Opposer.

Applicant's Answer: This allegation is a legal conclusion to which no answer is necessary. To the extent an answer is required, Applicant denies the allegations set forth in Paragraph 7 of the Notice of Opposition and leaves Opposer to its proofs.

8. Applicant's goods are likely to be purchased, used or otherwise received by consumers and potential consumers of Opposer's goods who, upon purchasing, using or otherwise receiving Applicant's goods bearing the TRIBAL MOTORWORKS mark, are likely to be confused and deceived and are likely to falsely believe in the existence of some association between the Applicant or Applicant's goods and Opposer, all to the injury of Opposer.

Applicant's Answer: Applicant denies the allegations set forth in Paragraph 8 of the Notice of Opposition and leaves Opposer to its proofs.

9. Accordingly, Applicant's use and registration of the TRIBAL MOTORWORKS is likely to cause confusion in the minds of consumers or to cause mistake or to deceive, or otherwise injure, diminish or detract from the prior rights firmly established by Opposer in and to the TRIBAL mark.

Applicant's Answer: This allegation is a legal conclusion to which no answer is necessary. To the extent an answer is required, Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition and leaves Opposer to its proofs.

AFFIRMATIVE DEFENSES

1. Opposer's action is barred by the doctrine of acquiescence.

2. Opposer's action is barred by the doctrine of abandonment.

3. Opposer's action cannot be sustained because there is no likelihood of confusion between the marks.

4. Applicant reserves the right to add additional affirmative defenses as they may become known during the course of this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully requests that Opposer's Notice of Opposition be dismissed in its entirety and that Application Serial No. 76/541,236 for the TRIBAL MOTORWORKS Mark be permitted to proceed to registration.

Applicant respectfully requests that the TTAB direct all further correspondence in this matter to the undersigned attorney. The required Power of Attorney is attached.

Dated: April 18, 2005

By: /Mary C. Bonnema/

MCGARRY BAIR PC
Joel E. Bair
Mary C. Bonnema
171 Monroe Avenue, N.W., Suite 600
Grand Rapids, Michigan 49503
Attorneys for Applicant
Tribal Motor Works, LLC

CERTIFICATE OF SERVICE

This is to certify that a true and complete copy of the foregoing Applicant's Answer and Affirmative Defenses was served by first-class mail, postage prepaid, on Opposer's counsel at the following address:

Carrie Webb Olson, Esq.
Edwards & Angell, LLP
101 Federal Street
P.O. Box 55874
Boston, Massachusetts 02205

This 18th day of April, 2005.

/Mary C. Bonnema/
Mary C. Bonnema

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

POWER OF ATTORNEY

Applicant:	Tribal Motor Works, LLC	Docket No.	71290-6
Mark:	TRIBAL MOTORWORKS		
Serial No.:	76/541,236		

TO THE COMMISSIONER FOR TRADEMARKS

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Honorable Commissioner:

Tribal Motor Works, LLC hereby appoints McGarry Bair PC, a firm including John E. McGarry, Joel E. Bair, G. Thomas Williams, Mark A. Davis, Mary C. Bonnema, and Michael F. Kelly, all members of the Bar of the State of Michigan and all of whom are located at 171 Monroe Avenue, N.W., Suite 600, Grand Rapids, Michigan, 49503, telephone (616) 742-3500, to transact all business in the Patent and Trademark Office in connection with the above-identified application. Please direct all future correspondence to Mary C. Bonnema at the noted address.

The USPTO is authorized to communicate with Applicant's attorney at e-mail address: mcb@mcgarrybair.com.

Respectfully submitted,

TRIBAL MOTOR WORKS, LLC

Dated: 4/13/05

By: _____

Title: President