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

Proceeding	91164583
Party	Defendant Headhunter, Inc. Headhunter, Inc. 3380 SW 11th Avenue Fort Lauderdale, FL 33315
Correspondence Address	WENDY K.B. BUSKOP BUSKOP LAW GROUP, P.C. 1717 ST. JAMES PLACE SUITE 500 HOUSTON, TX 77056
Submission	Answer
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Date	05/03/2005
Attachments	Applicant's Answer to Notice of Opposition.pdf (7 pages)

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

DFT, INC.)	
)	
OPPOSER)	
)	
VS.)	OPPOSITION NO. 91164583
)	
)	
HEADHUNTER, INC.)	
)	
APPLICANT)	
Of Mark: X-CALIBER)	
Serial No. 76/534,519)	

Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant received the Notice of Opposition mailed March 21, 2005, from the United States Patent and Trademark Office.

The TTAB provided a response period of 40 days after the mailing date to respond to the notice of opposition. Applicant respectfully notes that a Motion to Extend Time to File Applicant’s Answer was requested on May 2, 2005.

The TTAB noted that the Discovery period opens April 10, 2005, for depositions, interrogatories and document production and closes October 07, 2005.

The 30-day testimony period for the party in position of plaintiff, DFT, Inc., closes January 05, 2006, the 30-day period for Headhunter, Inc., closes March 06, 2006, and the 15-day rebuttal period for DFT, Inc., closes on April 20, 2006.

Applicant intends to file a request for oral hearing as provided by Trademark Rule 2.129.

Applicant notes that the use of telephone conferences may be used by the parties per 1235 TMOG 68 (June 20, 2000).

Applicant's answer to the opposition is as follows:

1. Applicant denies knowing whether Opposer and its predecessor-in-title have been engaged in the design, development, manufacture, sale, distribution, manufacture, sale, distribution and promotion of an array of valve products for use and application for numerous years in a wide variety of commercial and industrial fields and/or industries.
2. Applicant denies knowing that Opposer's major lines of valves are identified by the mark EXCALIBUR.
3. Applicant denies knowing that Opposer and its predecessor-in-title have used the mark EXCALIBUR in the United States as a trademark to identify and distinguish Opposer's valve products.
4. Applicant denies knowing that Opposer and its predecessor-in-title have used the mark EXCALIBUR from at least as early as October 14, 1987, continuously until present, to identify and distinguish Opposer's valve products.

5. Applicant admits that Opposer appears to own the mark EXCALIBUR, U.S. Trademark Registration No. 1,519,548, based on Opposer's Exhibit A. Applicant, however, denies knowledge whether the mark is valid as it stands or whether it was assigned to another party.
6. Applicant admits that Applicant intends to use the trademark X-CALIBER in commerce for "water pumps for water systems, namely industrial water systems, reverse osmosis filtered water systems, fuel cell water removal systems, and pressurized water systems for boats and recreational vehicles."
7. Applicant denies that Applicant and Opposer are competitors in the water systems industry, and Applicant denies that Applicant's scope of goods identified in Trademark Application Serial No. 76/534,519, are substantially similar, or so closely related or complimentary to, and flow in the same channels of trade as Opposer's products that purchasers, prospective purchasers, persons in the trade, and the public are apt to believe that the Applicant's and Opposer's products come from the same source.
8. Applicant denies that Applicant is not entitled to appropriate or register the trademark X-CALIBER for the scope of goods identified in Trademark Application Serial No. 76/534,519.
9. Applicant denies that Applicant is not entitled to the appropriation and use of the trademark X-CALIBER on the date it filed the application for

registration on August 4, 2003, or on the date of publication on September 7, 2004.

10. Applicant denies that the trademark X-CALIBER so resembles the mark EXCALIBUR as to be likely to cause confusion, or to cause mistake, or to deceive.
11. Applicant denies that the trademark X-CALIBER so resembles the mark EXCALIBUR as to be likely to cause confusion, or to cause mistake, or to deceive.
12. Applicant denies that the scope of goods identified in Trademark Application Serial No. 76/534,519 is substantially similar or so closely related or complimentary to Opposer's products, that the contemporaneous use of the trademark X-CALIBER by Applicant and the alleged use of the mark EXCALIBUR by Opposer, in connection with such goods is likely to cause confusion, or mistake or deception among purchasers and the public, and in the trade.
13. Applicant does not believe that Applicant's trademark X-CALIBER and the mark EXCALIBUR are phonetic equivalents, nor does the Applicant believe that they are identical in sound and meaning. Applicant does not believe that the trademark X-CALIBER and the mark EXCALIBUR are virtually identical in overall commercial impression, nor does the Applicant believe that they are highly similar in appearance.
14. Applicant denies the trademark X-CALIBER, for the goods identified in Trademark Application Serial No. 76/534,519, is likely to cause

confusion, mistake or deception by causing the public and the trade to assume that the goods identified in Trademark Application Serial No. 76/534,519, emanate from Opposer, or are in some way associated, connected, or sponsored by Opposer.

15. Applicant denies that the publication and registration of Trademark Application Serial No. 76/534,519 are barred by the provisions of §2(d) of the Trademark Act. The Applicant denies that the trademark X-CALIBER so resembles the mark EXCALIBUR as to be likely, when applied to the Applicant's scope of goods identified in Trademark Application Serial No. 76/534,519 to cause confusion or to cause mistake or to deceive.
16. Applicant denies that the Opposer is being or will be damaged by the use and registration of the trademark X-CALIBER by Applicant.

Applicant would like to note that the mark EXCALIBUR, as registered in U.S. Registration No. 1,519,548, is for metal check valves in Class 07. The above identified opposition filed against Applicant for the trademark X-CALIBER, in Class 11 for "water pumps for water systems, namely industrial water systems, reverse osmosis filtered water systems, fuel cell water removal systems, and pressurized water systems for boats and recreational vehicles," which the Trademark Attorney approved for publication.

Applicant states that there is no likelihood of confusion between Applicant's mark X-CALIBER for "water pumps for water systems, namely industrial water systems, reverse osmosis filtered water systems, fuel cell water removal systems, and pressurized

water systems for boats and recreational vehicles,” and the mark EXCALIBUR for “metal check valves”.

Applicant believes that the trademark X-CALIBER creates a different overall commercial impression when compared with the Opposer’s mark. Applicant respectfully states that the goods cited in Applicant’s Trademark Application Serial No. 76/534,519 are not so related to the goods cited in the registration for the mark EXCALIBUR that the marks are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source. See, *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field).

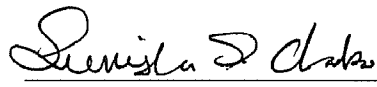
Applicant believes the above denials comply with the format specified in the Federal Rules of Civil Procedure Rule 8(b).

WHEREFORE, Applicant respectfully prays that the above cited Opposition be denied and that the registration of Applicant’s mark be granted.

Respectfully Submitted,

5/2/05

Date



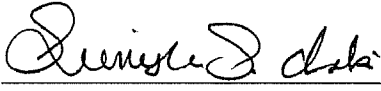
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served, certified first class mail, postage prepaid, upon Mr. Stephan G. Janoski, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036, on this 2nd day of May, 2005.

5/02/05
Date



Sunisha S. Choksi
Buskop Law Group, P.C.
On behalf of Applicant, Headhunter, Inc.