

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

In the Matter of Application Serial No. 78/441,158
Filed June 24, 2004
Mark IN ROCK WE TRUST
Published on June 7, 2005

House of Blues Brands Corp.,

Opposer,

v.

Celebrities Publishing Corporation,

Applicant.

Opposition No. 91,165,899

**APPLICANT'S ANSWER TO FIRST
AMENDED NOTICE OF
OPPOSITION; CERTIFICATE OF
SERVICE**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant Celebrities Publishing Corp. (hereinafter "Celebrities"), hereby responds as follows to the First Amended Notice of Opposition filed herein by opposer House of Blues Brands Corp:

1. Answering paragraph 1 of the First Amended Notice of Opposition, Applicant admits the allegations contained therein.
2. Answering paragraph 2 of the First Amended Notice of Opposition, Applicant admits the allegations contained therein.
3. Answering paragraph 3 of the First Amended Notice of Opposition, Applicant

does not have sufficient knowledge or information to form a belief as to the allegations contained therein, and based thereon denies each and every such allegation.

4. Answering paragraph 4 of the First Amended Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein, and based thereon denies each and every such allegation.

5. Answering paragraph 5 of the First Amended Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein, and based thereon denies each and every such allegation.

6. Answering paragraph 6 of the First Amended Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein, and based thereon denies each and every such allegation.

7. Answering paragraph 7 of the First Amended Notice of Opposition, Applicant denies the allegations contained therein.

8. Answering paragraph 8 of the First Amended Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein, and based thereon denies each and every such allegation.

9. Answering paragraph 9 of the First Amended Notice of Opposition, Applicant incorporates herein by reference, as though set forth in full, each and every admission, denial, and allegation set forth in paragraphs 1 through 9, inclusive.

10. Answering paragraph 10 of the First Amended Notice of Opposition, Applicant denies the allegations contained therein.

11. Answering paragraph 11 of the First Amended Notice of Opposition, Applicant

admits that if registration is granted, it will obtain at least a *prima facie* exclusive right to use the IN ROCK WE TRUST mark in connection with the goods recited in application Serial No. 78/441,158, in Class 18. Applicant denies each and every other allegation contained in paragraph 11.

12. Answering paragraph 12 of the First Amended Notice of Opposition, Applicant incorporates herein by reference, as though set forth in full, each and every admission, denial, and allegation set forth in paragraphs 1 through 12, inclusive.

13. Answering paragraph 13 of the First Amended Notice of Opposition, Applicant denies the allegations contained therein.

14. Answering paragraph 14 of the First Amended Notice of Opposition, Applicant denies the allegations contained therein.

15. Answering paragraph 15 of the First Amended Notice of Opposition, Applicant denies the allegations contained therein.

16. Answering paragraph 16 of the First Amended Notice of Opposition, Applicant admits that if registration is granted, it will obtain at least a *prima facie* exclusive right to use the IN ROCK WE TRUST mark in connection with the goods recited in application Serial No. 78/441,158, in Class 18. Applicant denies each and every other allegation contained in paragraph 16.

AFFIRMATIVE DEFENSES

17. AS A FIRST SEPARATE AND AFFIRMATIVE DEFENSE, Applicant alleges that the Opposition fails to state a claim upon which relief can be granted in favor of Opposer and against Applicant.

18. AS A SECOND SEPARATE AND AFFIRMATIVE DEFENSE, Applicant alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark taken as a whole and the pleaded marks of Opposer are not confusingly similar.

19. AS A THIRD SEPARATE AND AFFIRMATIVE DEFENSE, Applicant alleges that Opposer's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.

20. AS A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE, Applicant alleges that its IN ROCK WE TRUST mark does not dilute Opposer's IN BLUES WE TRUST mark, *inter alia*, Opposer's mark is not famous or distinctive, and Applicant's mark is not identical or substantially similar to Opposer's mark.

21. AS A FIFTH SEPARATE AND AFFIRMATIVE DEFENSE, Applicant reserves the right to assert additional defenses that may be revealed through investigation or discovery.

WHEREFORE, in view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown that it will be, or is likely to be, damaged by the registration of Applicant's trademark; and that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer. Applicant prays that this Opposition be dismissed and that a Notice of Allowance of Applicant's trademark issue.

DATED: Honolulu, Hawaii, April 17, 2006.

By: Chad M. Iida

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CERTIFICATE OF MAILING

I hereby certify that this APPLICANT'S ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

on 4/17/06
Date

Chad M. Iida
Chad M. Iida

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CERTIFICATE OF SERVICE

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I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION**, and this **CERTIFICATE OF SERVICE** was served upon Opposer by first-class mail, postage prepaid, to its last known addresses and on the date set out below:

Kirt S. O'Neill
Marissa Lawson
Akin Gump Strauss Hauer & Feld LLP
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San Antonio, Texas 78212

Attorneys for Opposer

DATED: Honolulu, Hawaii, April 17, 2006.



Robert Carson Godbey
Jess H. Griffiths
Chad M. Iida
Attorneys for Applicant