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

<b>Proceeding</b>	91166014
<b>Party</b>	Defendant Blue Frog Mobile, LLC Blue Frog Mobile, LLC 500 Union St., Suite 201 Seattle, WA 98101
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<b>Submission</b>	Answer
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<b>Date</b>	11/15/2005
<b>Attachments</b>	Answer.pdf ( 6 pages )

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

In the Matter of Trademark Application Serial No. 78/395,861  
Published in the Official Gazette (Trademarks) on May 3, 2005

BLUE FROG INTERNET, INC.,

Opposer,

v.

BLUE FROG MOBILE, INC.,

Applicant.

**Opposition No. 91166014**

**Serial No. 78/395,861**

**Publication Date: May 03, 2005**

**Mark: BLUE FROG**

**APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION**

Applicant, Blue Frog Mobile, Inc., hereby files this Answer in response to the Notice of Opposition filed by Blue Frog Internet, Inc. with the Trademark Trial and Appeal Board on July 20, 2005. Blue Frog Mobile, Inc. ("Blue Frog Mobile")<sup>1</sup> answers

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<sup>1</sup> Blue Frog Mobile incorrectly identified itself in its application as "Blue Frog Mobile, LLC." Blue Frog Mobile intends to correct its designation with the Patent and Trademark Office.

the Notice of Opposition (“Opposition”) as follows:

1. In answer to the averments of Paragraph 1 (each hereinafter referred to as a “Paragraph”) of the Opposition, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 1, and based thereon Blue Frog Mobile denies each and all of these averments.

2. In answer to the averments of Paragraph 2, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 2, and based thereon Blue Frog Mobile denies each and all of these averments.

3. In answer to the averments of Paragraph 3, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 3, and based thereon Blue Frog Mobile denies each and all of these averments.

4. In answer to the averments of Paragraph 4, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 4, and based thereon Blue Frog Mobile denies each and all of these averments.

5. In answer to the averments of Paragraph 5, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 5, and based thereon Blue Frog Mobile denies each and all of these averments.

6. In answer to the averments of Paragraph 6, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in

Paragraph 6, and based thereon Blue Frog Mobile denies each and all of these averments.

7. In answer to the averments of Paragraph 7, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 7, and based thereon Blue Frog Mobile denies each and all of these averments.

8. In answer to the averments of Paragraph 8, Blue Frog Mobile admits that it filed “the instant ‘intent to use’ application (serial no. 78395861) . . . for the word mark “Blue Frog,” and that “[t]here are actually three applications currently pending, the other two of which have not yet been published for opposition (“Intent to Use” application for Blue Frog logo, serial no. 78408362; and “Use in Commerce” application for Blue Frog Mobile, serial no. 78509154, with a date of first use of 1/31/04).” Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 8, and on this basis denies the remaining allegations of Paragraph 8.

9. In answer to the averments of Paragraph 9, Blue Frog Mobile is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 9, and based thereon Blue Frog Mobile denies each and all of these averments.

10. In answer to the averments of Paragraph 10, Blue Frog Mobile admits it received the letter attached to the Opposition as Exhibit D but denies the allegations in that letter.

11. In answer to the averments of Paragraph 11, Blue Frog Mobile denies all of the averments contained in Paragraph 11. Blue Frog Mobile specifically denies that Opposer is entitled to the relief it requests.

### **AFFIRMATIVE DEFENSES**

In further answer to the Opposition, Blue Frog Mobile asserts the following affirmative defenses:

#### **No Likelihood of Confusion**

12. There is no likelihood of confusion between the origin of Opposer's products and services and the products and services of Blue Frog Mobile.

13. Opposer offers a service that is distinct from the products and services offered by Blue Frog Mobile.

14. The products and services of Opposer and those of Blue Frog Mobile are marketed through distinct channels.

15. The products and services of Opposer and those of Blue Frog Mobile are distributed through distinct channels.

16. The consumers of the products and services of Opposer and those of Blue Frog Mobile are distinct.

17. The consumers of the products and services of Opposer and those of Blue Frog Mobile are sophisticated and discriminating.

18. There is no overlap between these groups of consumers.

**Opposer Only Has Common Law Rights (if at all) in The “Blue Frog” Mark**

19. Opposer has not filed a registration with the USPTO for the “Blue Frog” mark.

20. Opposer can only rely on its common law rights to the Blue Frog (or any similar) mark.

21. Opposer only has common law rights (if at all) in the Blue Frog mark where there is actual market penetration. Blue Frog Mobile avers based on information and belief that (1) Opposer has no significant volume of sales sufficient to find actual market penetration in any markets; (2) there are no significant positive growth trends with respect to sales of Opposer’s services in any markets; (3) the proportion of actual purchasers as opposed to potential purchasers or Opposer’s services is low; and (4) Opposer has not effected significant advertising in any relevant markets.

**Other Affirmative Defenses**

22. Applicant also asserts other affirmative defenses of: laches, waiver, and estoppel.

23. Opposer’s Notice of Opposition fails to state a claim upon which relief may be granted.

24. Applicant reserves the right to add more defenses pending discovery.

**RELIEF REQUESTED**

25. Blue Frog Mobile respectfully requests that Opposer's Opposition be dismissed and that Blue Frog Mobile's registration be issued forthwith.

Respectfully Submitted

**NEWMAN & NEWMAN  
ATTORNEYS AT LAW, LLP**

By:



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