

ESTTA Tracking number: **ESTTA73238**

Filing date: **03/28/2006**

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

Proceeding	91168664
Party	Defendant THE FREecycle NETWORK THE FREecycle NETWORK 901 NORTH PERRY AVENUE TUCSON, AZ 85705
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Date	03/28/2006
Attachments	SFX4DBD.pdf (5 pages)

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

FREECYCLESUNNYVALE

Opposer,

v.

THE FREECYCLE NETWORK

Applicant.

Opposition No.: 91168664

ANSWER TO NOTICE OF OPPOSITION

Applicant The Freecycle Network ("Applicant"), owner of application Serial No. 78/475,113 (the "Application") for the mark FREECYCLE & Design (the "Design Mark"; the mark FREECYCLE in block lettering is sometimes referred to herein as the "Mark"), by and through its undersigned counsel, hereby submits this answer to the Notice of Opposition (the "Notice") as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and on that basis denies such allegations.
2. Applicant admits the allegations in Paragraph 2.
3. Applicant denies the allegations in Paragraph 3.
4. Applicant denies the allegation in Paragraph 4 as worded, to the extent that such allegation uses the terms "freecycling" and "freecyclers" generically. Applicant otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies such allegations.
5. Applicant denies the allegation in Paragraph 5 as worded, to the extent that such allegation uses the terms "freecycling" and "freecyclers" generically. Applicant admits that it provides those services identified in the Application (the Identified "Services").

6. Applicant denies the allegations in the first sentence of Paragraph 6, regarding the allegedly generic nature of the term "freecycling." Applicant admits that the Identified Services provide numerous benefits to society, including those noted in Paragraph 6.

7. Applicant denies the allegations in Paragraph 7 as worded, to the extent that such allegations use the terms "freecycling" and "freecyclers" generically. Applicant further denies the allegations in Paragraph 7 as worded, as the term "many" is vague.

8. Applicant denies the allegations in Paragraph 8 as worded, to the extent that such allegations use the terms "freecycling" and "freecyclers" generically. Applicant further lacks knowledge or information sufficient to form a belief as the truth of the allegations contained in Paragraph 8, and on that basis denies such allegations.

9. Applicant admits that it was founded in May, 2003. Applicant denies the remaining allegations in Paragraph 9 as worded, to the extent that such allegations use the terms "freecycling" and "freecyclers" generically. Applicant admits that it has been involved in promoting the benefits provided by the Identified Services.

10. Applicant denies the allegations in Paragraph 10 as worded, to the extent that such allegations use the terms "freecycling" and "freecyclers" generically. Applicant otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and on that basis denies such allegations.

11. Applicant lacks knowledge or information sufficient to form a belief as the truth of the allegation contained in Paragraph 11, and on that basis denies such allegation.

12. Applicant denies the allegation in Paragraph 12 as worded, as the terms "initially" and "enthusiastic" are vague.

13. Applicant admits that it granted Opposer a license to use a mark derived from the Mark. Applicant denies the remaining allegations in Paragraph 13 as worded, to the extent that they suggest that the noted wording represents the entire text of the noted communications. Applicant admits the accuracy of the quoted portions of such communications.

14. Applicant denies the allegation in the first sentence of Paragraph 14, regarding the alleged generic use of "freecycling." Applicant further denies that it has used or is using the terms "freecycle" and "freecycling" generically. Applicant admits that the document shown as the last page of Exhibit 1 to the Notice was submitted as a specimen of use in connection with the Application. Applicant lacks knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in Paragraph 14, and on that basis denies such allegations.

15. Applicant denies the allegations in Paragraph 15 as worded, to the extent that such allegations use the terms "freecycling" and "freecyclers" generically. Applicant denies that generic use of the terms "freecycle" and "freecycling" is the prevailing practice in the national media. Applicant lacks knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in Paragraph 15, and on that basis denies such allegations.

16. Applicant denies the allegations in Paragraph 16 as worded, to the extent that such allegations presume the genericness of the terms "freecycling" and "freecycle." Applicant admits that the Application was filed with the U.S. Trademark Office on August 27, 2004.

17. Applicant denies any generic use of the terms "freecycle" or "freecycling." Applicant admits that it has made, and continues to make, ongoing changes to its Internet web site.

18. Applicant denies the allegations in Paragraph 18 as worded. Applicant admits that it has continuously and diligently policed and asserted exclusive rights in the Mark.

19. Applicant admits the allegations in Paragraph 19.

20. Applicant denies the allegations in Paragraph 20 as worded, to the extent that such allegations presume the genericness of the terms "freecycling" and "freecycle." Applicant lacks knowledge or information sufficient to form a belief as the truth of the remaining allegations contained in Paragraph 20, and on that basis denies such allegations.

21. Applicant denies the allegation in Paragraph 21 as worded, as the terms "simple" is vague. Applicant otherwise admits the allegation in Paragraph 21.

22. Applicant denies the allegations in Paragraph 22 as worded, to the extent that such allegations presume the genericness of the terms "freecycling" and "freecycle." Applicant denies the remaining allegations in Paragraph 22.

AFFIRMATIVE DEFENSES

In addition to the answers provided above, Applicant hereby asserts the following affirmative defense:

23. Opposer has claimed, and Applicant has admitted, that Applicant granted Opposer a license (the "License") to use a mark derived from the Mark.

24. Under the doctrine of licensee estoppel, Opposer is estopped from challenging the validity of the Mark during the terms of the License, and thus the Notice of Opposition fails to state a claim upon which relief can be granted.

25. On information and belief, since termination of the License September 23, 2005, Opposer has actively encouraged providers of the Identified Services under Applicant's network to make generic use of the Mark.

26. As a result, Opposer has unclean hands with respect to its claim that the Mark lacks distinctiveness.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety and that the Trademark Office issue a Certificate of Registration for the Design Mark.

DATED: March 28, 2006

PERKINS COIE LLP

By 

James L. Vana

Perkins Coie LLP

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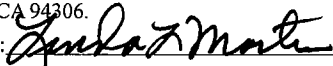
(206) 359-8000

Attorneys for The Freecycle Network

CERTIFICATE OF SERVICE

I hereby certify that this, ANSWER TO NOTICE OF OPPOSITION is being deposited with the United States Postal Service with sufficient postage as first class mail on March 28, 2006 in an envelope addressed to Ian N. Feinberg, at Mayer Brown Rowe & Maw LLP, Two Palo Alto Square, Suite 300 30Q0 El Camino Real, Palo Alto, CA 94306.

Signature:



Printed Name: Linda L. Martin