

ESTTA Tracking number: **ESTTA97160**

Filing date: **08/30/2006**

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

Proceeding	91172585
Party	Defendant SPAMfighter ApS SPAMfighter ApS Rovsinggade 88, 2 DKX Copenhagen N, 2200
Correspondence Address	Matthew H. Swyers, Esq. The Swyers Law Firm, PLLC 344 Maple Avenue West, Suite 389 Vienna, VA 22180
Submission	Answer
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	08/30/2006
Attachments	Answer and Grounds of Defense.pdf (5 pages)(91485 bytes)

Paragraph of the Notice of Opposition and therefore denies the same. In response to the specifically enumerated paragraphs of the Notice of Opposition, Applicant responds as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition and therefore denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant denies the allegations set forth in Paragraph 5 of the Notice of Opposition and demands strict proof thereof.

6. Applicant admits the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant admits the allegations of Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations set forth in Paragraph 8 of the Notice of Opposition and demands strict proof thereof.

9. Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition and demands strict proof thereof.

10. Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition and demands strict proof thereof.

13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition and demands strict proof thereof.

14. Applicant denies the allegations set forth in Paragraph 14 of the Notice of Opposition and demands strict proof thereof.

15. Applicant denies the allegations set forth in Paragraph 15 of the Notice of Opposition and demands strict proof thereof.

16. Applicant denies the allegations set forth in Paragraph 16 of the Notice of Opposition and demands strict proof thereof.

17. Applicant denies the allegations set forth in Paragraph 17 of the Notice of Opposition and demands strict proof thereof.

Applicant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed.

AFFIRMATIVE PLEADINGS AND DEFENSES

COMES NOW the Applicant, by and through counsel, The Swyers Law Firm, and pleads the following Affirmative Pleadings and Defenses to Opposer's Notice of Opposition:

1. Opposer's claims are barred by the doctrine of *acquiescence* and *estoppel*.
2. Opposer's claims are barred by the doctrine of *laches*.
3. Opposer's claims are barred by the doctrine of *genericness*.

4. Opposer has failed to state a claim upon which relief can be granted in regard to its claim of dilution.

5. Opposer's claims must fail because Applicant's mark SPAMFIGHTER and design creates a separate and distinct commercial impression apart from Opposer's alleged line of SPAM marks.

6. Opposer's claims must fail because Applicant's goods are not sufficiently related to the goods of the Opposer in any manner and/or conditions surrounding the marketing of the respective goods are not such that they would or could be encountered by the same persons under circumstances that could give rise to the mistaken belief that the respective goods originate from the same provider thereof.

Applicant reserves the right to assert such other affirmative pleadings and defenses as discovery in this case discloses a basis therefore.

WHEREFORE, the premises considered, Applicant SPAMfighter ApS, by and through counsel, respectfully prays that the Notice of Opposition be dismissed with prejudice.

DATED this 30th day of August, 2006.

THE SWYERS LAW FIRM, PLLC

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