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

TRIPLE FIVE SOUL INTERNATIONAL	]	
LLC,	]	
	]	
Opposer,	]	
	]	
v.	]	Opposition No. 91174167
	]	
BA&SH,	]	
	]	
Applicant.	]	

**ANSWER TO NOTICE OF OPPOSITION**

In Answer to the Notice of Opposition, Applicant, BA&SH denies that the Opposer would in any way be damaged by the registration of Applicant's mark here sought to be registered. Applicant has no direct knowledge of the legal status and address of the Opposer as set forth in the preamble of the Notice and therefor demands strict proof thereof.

With respect to the stated grounds for the Opposition, Applicant responds to each unnumbered paragraph as follows:

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703 837-9600



1. Applicant is without knowledge of the ownership status of the applications identified in the first paragraph of the Notice of Opposition and therefor denies the allegations and demands strict proof thereof.

2. Applicant is without knowledge of the ownership status of the applications identified in the second paragraph of the Notice of Opposition and therefor denies the allegations and demands strict proof thereof.

3. Applicant is without knowledge of the allegations set forth in the third paragraph of the Notice of Opposition and therefor denies the allegations and demands strict proof thereof.

4. Applicant is without knowledge of the allegations regarding investments of time and money as alleged in paragraph four of the Notice of Opposition and therefor denies the allegations and demands strict proof thereof.

5. Applicant denies the allegations of exclusivity and widespread use of the pleaded marks as set forth in paragraph five of the Notice of Opposition.

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

7. Applicant admits that a bar code constitutes part of the mark it seeks to register, but denies that its mark is confusingly similar to Opposer's trademarks as alleged in paragraph seven of the Notice of Opposition.

8. Applicant denies the allegations of Paragraph eight of the Notice of Opposition.

9. Applicant denies the allegations of Paragraph nine of the Notice of Opposition.

10. Applicant admits that it does not have, nor does it require, consent of the Opposer to use the mark sought to be registered.

11. Applicant denies the allegations of Paragraph eleven of the Notice of Opposition in so far as interfering with any rights of Opposer, but admits that registration of its composite mark would provide it with certain statutory rights.

12. Applicant is without knowledge of the allegations set forth in the twelfth paragraph of the Notice of Opposition and therefor denies the allegations and demands strict proof thereof.

### **AFFIRMATIVE DEFENSES**

In further answer to the Notice of Opposition, the Applicant asserts the following Affirmative Defenses:

1. The Opposer has failed to allege grounds sufficient to establish its standing to maintain the present Opposition.

2. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the

pleaded mark of Opposer, when applied to the respective goods of the parties, are not confusingly similar to the consumer.

3. Due to extensive use and registration by third parties of bar code designs for goods similar to those of the Opposer and the Applicant, no party has exclusive rights to such bar code design trademarks. Copies of such registrations will be introduced during Applicant's testimony period.

Accordingly, Applicant prays that the Notice of Opposition be dismissed and the application of BA&SH be permitted to register.

Respectfully submitted,  
BA&SH

January 3, 2007

By



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Answer was sent by first class mail with proper postage affixed, this third day of January, 2007, to counsel for Opposer, Richard L. Herzfeld, Esq., c/o Bahn Herzfeld & Multer, 555 Fifth Avenue, 14<sup>th</sup> Floor, New York, NY 10017.



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Donald L. Dennison