

91175192

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

Proceeding	91166201
Party	Plaintiff Ashley Paige Depew
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Date	09/08/2010
Attachments	ANSWER.090810.02.pdf (6 pages)(14483 bytes)

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

ASHLEY PAIGE DEPEW,)	Opposition No. 91166201
)	
Opposer,)	Application Serial No. 78/447486
)	
FORTUNE CASUALS, LLC,)	Mark: PAIGE
)	
Applicant.)	<u>CONSOLIDATED WITH:</u>
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PREMIUM DENIM, LLC,)	Opposition No.: 91175192
)	
Opposer,)	Application Serial No.: 78/66852
)	
v.)	Mark: ASHLEY PAIGE
)	
ASHLEY P. DEPEW,)	
)	
Applicant.)	
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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Ashley Paige Depew (“Applicant”) hereby responds to the Opposition filed by
Premium Denim, LLC (“Opposer”) as follows:

ANSWER

1. With respect to the allegations contained in paragraph 1, Applicant admits that Applicant filed an application to register the standard character mark, “ASHLEY PAIGE,” in International Class 025 and that said mark was published in the *Official Gazette* on September 19, 2006.

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2. With respect to the allegations contained in paragraph 2, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

3. With respect to the allegations contained in paragraph 3, Applicant denies all allegations therein.

4. With respect to the allegations contained in paragraph 4, Applicant admits that Applicant seeks registration under §1A with a claimed first use date of May, 2001. Save and except as expressly admitted herein, Defendant denies all allegations therein.

5. With respect to the allegations contained in paragraph 5, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

6. With respect to the allegations contained in paragraph 6, Applicant denies all allegations therein.

7. With respect to the allegations contained in paragraph 7, Applicant admits that Opposer filed Civil Case No. CV06-4786 against Applicant in the United States District for the Central District of California, and that Applicant filed a counter-claim alleging, among other things, Applicant's ownership of application Serial No. 78/668652. Save and except as expressly alleged herein, Applicant denies the remaining allegations of paragraph 7.

8. With respect to the allegations contained in paragraph 8, Applicant denies that Opposer will be damaged by the registration of the mark, "Ashley Paige," or that Opposer has any right to registration of the mark, "Paige." Save and except as expressly alleged herein, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

AFFIRMATIVE DEFENSES

Without admitting or conceding that it has the burden of proof or persuasion with respect to the matters asserted below, Applicant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

9. Each of the purported claims alleged in the Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Doctrine of Laches)

10. Each of the purported claims alleged in the Opposition is barred, in whole or in part, by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE
(Doctrines of Waiver, Acquiescence, Estoppel)

11. Each of the purported claims alleged in the Opposition is barred, in whole or in part, by the doctrines of waiver, acquiescence and estoppel.

FOURTH AFFIRMATIVE DEFENSE
(Doctrine of Unclean Hands)

12. Each of the purported claims alleged in the Opposition is barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE
(Lack of Intent)

13. Any and all acts alleged to have been committed by Applicant, if performed, were performed with lack of knowledge and lack of willful intent.

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SIXTH AFFIRMATIVE DEFENSE
(Ratification)

14. Opposer expressly or by conduct approved, authorized, accepted or ratified the acts and/or transactions of which they complain and thus are barred from recovery.

SEVENTH AFFIRMATIVE DEFENSE
(Contractual Estoppel)

15. Each of the purported claims alleged in the Opposition is barred, in whole or in part, by the doctrine of contractual estoppel.

EIGHTH AFFIRMATIVE DEFENSE
(Restricted Registration)

16. Applicant is entitled to registration upon amendment of Applicant's identification of goods to conform with use or upon restriction of Applicant's identification of goods to reflect the actual nature of Applicant's goods.

NINTH AFFIRMATIVE DEFENSE
(Opposer's Mark Unregisterable)

17. Opposer's alleged mark is merely a surname and, as such, is not registerable.

TENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

18. Applicant reserves the right to allege other affirmative defenses as they may become known during the course of discovery, and hereby specifically reserves the right to amend her Answer to allege said affirmative defenses as such time as they become known.

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PRAYER FOR RELIEF

WHEREFORE, Applicant prays that the Opposition of Opposer be dismissed with prejudice.

DATED: September 8, 2010

JAMES R. SCHOENFIELD, PC

By: _____
James R. Schoenfield

CERTIFICATE OF SERVICE

I hereby certify that on **September 8, 2010**, a copy of the foregoing **ANSWER** has been sent by first class mail, postage prepaid to the following attorneys:

Counsel for: *Premium Denim, LLC*

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