

ESTTA Tracking number: **ESTTA138147**

Filing date: **04/30/2007**

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

Proceeding	91175781
Party	Defendant The Madjo Company, LLC The Madjo Company, LLC 2669 Einstein Drive Virginia Beach, VA 23456
Correspondence Address	MICHAEL H LEVINSON 303 34TH ST VIRGINIA BEACH, VA 23451 michael@mlevinsonlaw.com
Submission	Answer
Filer's Name	Michael H. Levinson
Filer's e-mail	michael@mlevinsonlaw.com, nyuspto@bryancave.com
Signature	/MHL/
Date	04/30/2007
Attachments	response.pdf (6 pages)(138846 bytes)

6. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 6 of the Notice of Opposition, and therefore denies the same.
7. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 7 of the Notice of Opposition, and therefore denies the same.
8. The allegations contained in Paragraph 8 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
9. The allegations contained in Paragraph 9 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
10. The allegations contained in Paragraph 10 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
11. The allegations contained in Paragraph 11 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
12. The allegations contained in Paragraph 12 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same..
13. The allegations contained in Paragraph 13 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.

14. The allegations contained in Paragraph 14 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
15. The allegations contained in Paragraph 15 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
16. The allegations contained in Paragraph 16 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
17. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 17 of the Notice of Opposition, and therefore denies the same.
18. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 18 of the Notice of Opposition, and therefore denies the same.
19. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 19 of the Notice of Opposition, and therefore denies the same.
20. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 20 of the Notice of Opposition, and therefore denies the same.
21. Applicant is without knowledge to admit or deny the allegations contained in Paragraph No. 21 of the Notice of Opposition, and therefore denies the same.
22. The allegations contained in Paragraph 16 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.

23. As to Paragraph No. 23 of the Notice of Opposition, Opposer failed to specify the date of first use of the mark "BN", the allegation is incomplete and therefore denied. Applicant further asserts that others have and continue to use the mark BN in various forms and iterations in commerce.
24. Applicant is without knowledge to admit or deny the allegation contained in Paragraph No. 24 of the Notice of Opposition, and therefore denies the same.
25. Applicant admits the allegation contained in the first sentence of Paragraph No. 25 of the Notice of Opposition. Applicant further admits it first used BN as part of its mark in commerce on February 1, 2006. Applicant is without knowledge to admit or deny the remaining allegations contained in Paragraph No. 25 and therefore denies the same.
26. Applicant is without knowledge to admit or deny the allegation contained in Paragraph No. 26 of the Notice of Opposition, and therefore denies the same.
27. The allegations contained in Paragraph 27 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
28. The allegations contained in Paragraph 28 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
29. Paragraph No. 29 of the Notice of Opposition is denied.
30. On information and belief, Applicant denies the allegation contained in Paragraph 30 of the Notice of Opposition.
31. Paragraph No. 31 of the Notice of Opposition is denied.

32. Applicant admits that Applicant and Opposer both intend to offer different products and/or services via the internet. In all other respects, the allegations in Paragraph 32 are denied.
33. The allegations in Paragraph No. 33 of the Notice of Opposition are denied.
34. The allegations in Paragraph No. 34 of the Notice of Opposition are denied.
35. The allegations in Paragraph No. 35 of the Notice of Opposition are denied.
36. The allegations in Paragraph No. 36 of the Notice of Opposition are denied.
37. The allegations contained in Paragraph 37 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
38. The allegations contained in Paragraph 38 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.
39. The allegations contained in Paragraph 39 of the Notice of Opposition call for a legal conclusion, to which Applicant is not required to respond and, to the extent Applicant is required to respond, Applicant denies the same.

AFFIRMATIVE DEFENSES

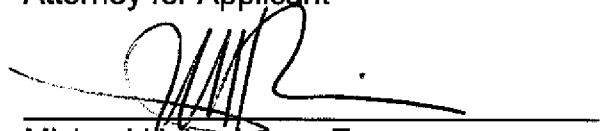
1. Applicant will rely on any and all properly provable affirmative defenses developed from discovery and further investigation, including but not limited to unclean hands, laches, estoppel, acquiescence, abandonment, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. Applicant reserves the right to amend this pleading to conform thereto.
2. The Opposition fails to state a claim upon which relief can be granted.

3. Applicant's use of the Mark does not create a likelihood of confusion with the marks asserted by Opposer in the Opposition.
4. The Mark is registrable on the Principal Register.

WHEREFORE, the Applicant prays that the Notice of Opposition be rejected, that the application Serial No. 78/742,478 be approved, and that the mark therein sought for the services therein specified in International Class 35 be issued.

Respectfully submitted,

Michael H. Levinson, Esq.
Attorney for Applicant

A handwritten signature in black ink, appearing to read 'MHL', is written over a horizontal line.

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Date: April 30, 2007