

ESTTA Tracking number: **ESTTA168370**

Filing date: **10/12/2007**

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

Proceeding	91179368
Party	Defendant Nedboy, Robin L.
Correspondence Address	NEDBOY, ROBIN L. 60 E 42ND ST RM 2320 NEW YORK, NY 10165-6209 robi@eleganthomedesign.com
Submission	Answer
Filer's Name	Erik M. Pelton
Filer's e-mail	emp@tm4smallbiz.com
Signature	/ErikMPelton/
Date	10/12/2007
Attachments	CLEAN LIVING Derner - Answer to Opposition.pdf (4 pages)(22556 bytes)

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

JAMES DERNER,)
Opposer,) Opposition No. 91179368
v.) Application. Serial No. 77119422
ROBIN L. NEDBOY,) Mark: CLEAN LIVING
Applicant.)

ANSWER TO NOTICE OF OPPOSITION

The following is the Answer of ROBIN L. NEDBOY (hereinafter “Applicant”), owner of Federal Trademark Application Serial No. 77119422 for the mark CLEAN LIVING, by and through Counsel, Erik M. Pelton, Esq., to the Notice of Opposition mailed September 6, 2007, on behalf of JAMES DERNER (hereinafter “Opposer”), and assigned Opposition No. 91179368.

Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition.
2. Admitted.
3. Admitted to the extent that the records of the U.S. Patent and Trademark Office substantiate the facts claimed.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition.

7. Denied.

8. Denied.

FURTHERMORE, Applicant sets forth the following in support of its defense:

9. Opposer has no trademark registration.

10. Opposer has not applied for registration of its mark prior to Applicant.

11. Upon information and belief, Opposer has not used its mark in interstate commerce since 1997.

12. Upon information and belief, Opposer has not used its mark continuously since 1997

13. The word CLEAN is diluted in relation to Opposer's goods.

14. The word LIVING is diluted in relation to Opposer's goods.

15. Opposer's alleged trademark is highly suggestive in relation to Opposer's goods.

16. Upon information and belief, the goods of Applicant are different from the goods of Opposer.

17. Upon information and belief, Applicant's goods and Opposer's goods travel in different channels of trade.

18. Upon information and belief, Applicant's goods and Opposer's goods are not likely to be marketed or sold together.

19. Upon information and belief, Applicant's consumers are different from Opposer's consumers.

20. Applicant's mark and Opposer's mark are not likely to cause confusion, mistake or deception to purchasers as to the source of Opposer's goods.

21. Upon information and belief, Applicant's first use of Applicant's mark in interstate commerce was prior to Opposer's first use of Opposer's mark in interstate commerce.

22. Upon information and belief, Applicant's first use of Applicant's related CLEAN LIVIN' mark in interstate commerce was prior to Opposer's first use of Opposer's mark in interstate commerce.

23. Opposer has acquiesced to Applicant's activities.

24. Opposer is barred from relief by the doctrine of estoppel by laches.

25. Opposer is barred from relief by the doctrine of estoppel by acquiescence.

26. Opposer's claims are barred by the doctrine of unclean hands or other applicable equitable principles.

27. Opposer has failed to adequately maintain, police, or enforce any trademark or proprietary rights it may have in Opposer's alleged trademark.

28. The Notice of Opposition fails to state a claim upon which relief may be granted.

Applicant hereby appoints Erik M. Pelton, a member of the Bar of the State of New Jersey, and Christopher Shiplett, a member of the Bar of the Commonwealth of Virginia, at the firm of

Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, Virginia 22210
TEL: (703) 525-8009
FAX: (703) 525-8089

to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial Number 77119422 in the United States Patent and Trademark Office.

A duplicate copy of this Answer to Notice of Opposition has been sent via First Class Mail to counsel for Opposer on October 12, 2007.

Respectfully Submitted,
ROBIN L. NEDBOY

By: _____
/ErikMPelton/
Erik M. Pelton

Erik M. Pelton & Associates, PLLC
PO Box 100637
Arlington, Virginia 22210
TEL: (703) 525-8009
FAX: (703) 525-8089
EMAIL: emp@tm4smallbiz.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Answer to Notice of Opposition was deposited as First Class mail with the United States Postal Service on October 12, 2007, to Counsel for Opposer at the following address:

Jay H. Geller
West Tower, Suite 4000
2425 West Olympic Blvd.
Santa Monica, CA 90404

By: _____
/ErikMPelton/
Erik M. Pelton, Esq.