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

Proceeding	91179644
Party	Defendant Nedboy, Robin L.
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Submission	Answer
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Date	02/23/2008
Attachments	CLEAN LIVING Zlotnik - Answer to Opposition.pdf (5 pages)(23843 bytes)

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

CLIFFORD B. ZLOTNIK,)
Opposer,) Opposition No. 91179644
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 21, 2007, on behalf of CLIFFORD B. ZLOTNIK (hereinafter “Opposer”), and assigned Opposition No. 91179644. Following several stipulated extensions of time to answer, an Answer is this proceeding is due by February 28, 2008.

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. Denied. Upon information and belief, Opposer is not the owner of the mark CLEANLIVING.
3. Denied. Upon information and belief, Opposer did not use his alleged CLEANLIVING mark in interstate commerce prior to Applicant’s filing date or date of first use.
4. Denied. Upon information and belief, Opposer and/or his licensees have not “sold and widely and extensively advertised goods bearing said CLEANLIVING trademark,”

5. Admitted to the extent that the records of the U.S. Patent and Trademark Office substantiate the facts claimed.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Opposer's goods 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 alleged mark prior to Applicant.

11. Opposer's application for CLEANLIVING, Serial No. 77138651, was filed on March 23, 2007, asserting "intent to use" the mark in commerce pursuant to Trademark Act Section 1(b).

12. Opposer's Notice of Opposition at paragraph 3 alleges that "Prior to Applicant's filing date and alleged date of first use, Opposer adopted and used his CLEANLIVING mark in interstate commerce for the purpose of identifying Opposer's products."

13. Upon information and belief, Opposer has submitted false statements under a penalty of perjury and/or false information regarding Application Serial No. 77138651, the Notice of Opposition in this proceeding, or both.

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

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

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

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

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

19. 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.

20. 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.

21. 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.

22. Upon information and belief, Applicant's first use of Applicant's related CLEAN LIVIN' mark in interstate commerce was prior to Opposer's application filing date regarding application Serial No. 77138651.

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

24. The Notice of Opposition, citing application Serial No. 77138651 as a basis for the 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

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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 February 23, 2008.

Respectfully Submitted,
ROBIN L. NEDBOY

By: _____
/ErikMPelton/
Erik M. Pelton

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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 February 23, 2008, to Counsel for Opposer at the following address:

Joshua S. Bish, Esquire
Reed Smith LLP
435 Sixth Avenue
PITTSBURGH, PA 15219

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