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

Proceeding	91181886
Party	Plaintiff Heeling Sports Limited
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Submission	Answer to Counterclaim
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Date	04/14/2008
Attachments	Heeling Sports Limited-Opposer's Answer to Applicant's Counterclaim 91181886.pdf (3 pages)(103861 bytes)

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

HEELING SPORTS LIMITED,)
)
 Opposer/Respondent)
)
v.)
)
)
)
HISWILLBEDONE PRODUCTIONS,)
THERESE CARRIER, an individual and)
US Citizen, Sole Proprietorship,)
)
 Applicant/Counterclaimant.)

OPPOSITION NO. 91181886

APPLICATION NO. 77/046393
MARK: WHEELY

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER’S ANSWER TO APPLICANT’S COUNTERCLAIM

In response to Applicant/Counterclaimant’s (“HWBD”) Counterclaim filed on February 22, 2008, Opposer/Respondent (“Heeling”) responds to the allegations by HWBD as follows:

With respect to the allegations contained in the introductory paragraph of the Counterclaim, Heeling admits that HWBD has applied to register WHEELY for imprinting messages on t-shirts in Class 40 and the application has been accorded Serial No. 77/046,393.

With regard to the remaining allegations, Heeling denies that HWBD has been or will be damaged by the existence of Heeling’s Registration Nos. 2720347 for HEELYS, 2698390 for HEELYS and design, and 2693898 for H HEELYS and design, and denies that HWBD is entitled to any relief.

1. Heeling denies the allegations contained in paragraph 12 of the Counterclaim.

2. Heeling denies the allegations contained in paragraph 13 of the Counterclaim.

3. Heeling denies the allegations contained in paragraph 14 of the Counterclaim.

Heeling also denies the allegations contained in sub-paragraphs a., b., c. and d. of paragraph 14.

4. Heeling denies that HWBD is entitled to any of the relief requested in its Prayer.

AFFIRMATIVE AND OTHER DEFENSES

Heeling asserts the following affirmative and other defenses. Heeling does not intend hereby to assume the burden of proof with respect to those matters as to which pursuant to law, HWBD bears the burden.

FIRST DEFENSE

Upon information and belief, HWBD's Counterclaim, in whole or in part, fails to state a claim for which relief can be granted.

SECOND DEFENSE

Upon information and belief, HWBD's claim for alleged fraud against Heeling in procuring its federal registrations fails to state a claim upon which relief can be granted. HWBD has not plead with specificity how Heeling's allegedly false statements to the Patent and Trademark Office were material to the issuance of the registrations, nor how HWBD has been legally harmed by such alleged false statements.

PRAAYER FOR RELIEF

Heeling prays that the Board:

1. Grant Heeling's Opposition to registration of HWBD's Application Serial No. 77/046393 and refuse registration of the mark WHEELY;

2. Dismiss all claims in HWBD's Counterclaim with prejudice and order that HWBD take nothing by way of this action;

3. Enter judgment in favor of Heeling declaring that Heeling's trademark rights are valid and enforceable;

4. Enter judgment in favor of Heeling declaring that Heeling's U.S. Trademark Registration Nos. 2720347, 2698390, and 2693898 are valid and enforceable; and

5. Enter judgment in favor of Heeling for such other and further relief that this Board deems just, equitable and proper.

Respectfully submitted,

Dated: April 14, 2008

/Lisa R. Hemphill/

Lisa R. Hemphill

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ATTORNEYS FOR:
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Answer to Applicant's Counterclaim is being sent on this 14th day of April, 2008 to counsel for HWBD via email and is also being deposited with the United States Postal Service as first class mail, postage prepaid, to:

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By: /Lisa R. Hemphill/