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

Proceeding	91182590
Party	Defendant Rock & Republic Enterprises, Inc.
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Date	08/13/2008
Attachments	Answer to Notice of Opposition 91182590.pdf ( 6 pages )(79509 bytes )

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

<p><i>In re Matter of Application Serial No. 78/914,837 for ROCK THE CURE</i></p> <p>BLUE JEANNE, INC.,</p> <p>Opposer,</p> <p>v.</p> <p>ROCK &amp; REPUBLIC ENTERPRISES, INC.</p> <p>Applicant.</p>	<p>Opposition No. 91-182590</p> <p><b>ANSWER TO NOTICE OF OPPOSITION</b></p>
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TO: Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Applicant Rock & Republic Enterprises, Inc. ("Applicant"), by and through its counsel, responds to the Notice of Opposition ("Opposition") filed by Opposer Blue Jeanne, Inc. ("Opposer") as follows:

1. Applicant denies the allegations contained in the preliminary paragraph of the Opposition.
2. In response to paragraph 1 of the Opposition, Applicant admits that it filed Application Serial No. 78/914,837 (the "Application") in Class 25.
3. Applicant admits the allegations contained in paragraph 2 of the Opposition.

4. Applicant admits the allegations contained in paragraph 3 of the Opposition.

5. In response to paragraph 4 of the Opposition, Applicant denies that Opposer has continuously used "Rock The Cure" in interstate commerce since prior to Applicant's filing date. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 4 of the Opposition, and therefore denies each and every such allegation.

6. In response to paragraph 5 of the Opposition, Applicant denies that Opposer has used "Rock The Cure" in commerce nationwide. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 5 of the Opposition, and therefore denies each and every such allegation.

7. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 6 of the Opposition, and therefore denies each and every such allegation.

8. In response to paragraph 7 of the Opposition, Applicant denies that Opposer has continuously used "Rock The Cure" in interstate commerce since April 2005. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 7 of the Opposition, and therefore denies each and every such allegation.

9. Applicant denies the allegations contained in paragraph 8 of the Opposition.

10. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 9 of the Opposition, and therefore denies each and every such allegation.

11. Applicant denies the allegations contained in paragraph 10 of the Opposition.

12. Applicant denies the allegations contained in paragraph 11 of the Opposition.

13. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 12 of the Opposition, and therefore denies each and every such allegation.

14. Applicant denies the allegations contained in paragraph 13 of the Opposition.

15. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 14 of the Opposition, and therefore denies each and every such allegation.

16. Applicant denies the allegations contained in paragraph 15 of the Opposition.

#### **AFFIRMATIVE DEFENSES**

##### ***First Affirmative Defense - Failure To State A Claim***

17. Opposer has failed to allege grounds sufficient to sustain the Opposition.

##### ***Second Affirmative Defense - Estoppel***

18. The Opposition is barred by estoppel.

##### ***Third Affirmative Defense - Acquiescence***

19. The Opposition is barred by Opposer's acquiescence.

##### ***Fourth Affirmative Defense - Waiver***

20. The Opposition is barred by the doctrine of waiver.

*Fifth Affirmative Defense - Laches*

21. Opposer is barred by laches from pursuing its claims against Applicant.

*Sixth Affirmative Defense - Intermediate User Defense*

22. Applicant's prior use of its ROCK THE CURE mark in California and nationwide, except in the State of Minnesota, in good faith and without knowledge of Opposer's alleged prior use of "Rock The Cure," provides Applicant with prior rights to its ROCK THE CURE mark in all territories in which Applicant used its ROCK THE CURE mark prior to Opposer's alleged first use of "Rock The Cure."

*Seventh Affirmative Defense - No Nationwide Right*

23. Opposer does not have, and has never had, nationwide rights to "Rock The Cure" because of Applicant's prior use of its ROCK THE CURE mark nationwide except in Minnesota, and because Opposer does not use "Rock The Cure" outside of Minnesota.

*Eighth Affirmative Defense - Unclean Hands*

24. Opposer is barred from recovery because it has acted with unclean hands.

*Ninth Affirmative Defense - Priority Use*

25. Applicant enjoys priority of use of its ROCK THE CURE mark in all territories outside of Minneapolis in the State of Minnesota, in which Applicant used its mark prior to the date of Opposer's alleged first use of "Rock The Cure."

*Tenth Affirmative Defense - No Trademark Rights In Applicant's Territory*

26. Opposer has not used, and has no rights to, "Rock The Cure" in the State of California, and in all other territories in which Applicant used its mark prior to the date of Opposer's alleged first use of "Rock The Cure" in Minneapolis, Minnesota.

*Eleventh Affirmative Defense - Privileged Actions*

27. All of Applicant's actions were and are fair, privileged and justified.

*Twelfth Affirmative Defense - No Damage*

28. Opposer has not suffered any loss or damage of any kind or character as a result of Applicant's conduct or any failure to act by Applicant.

*Thirteenth Affirmative Defense - No Trademark Use by Opposer*

29. Opposer's alleged use of "Rock The Cure" does not constitute trademark use.

*Fourteenth Affirmative Defense - No Secondary Meaning*

30. Opposer's use of "Rock The Cure" is as a title, which is not protectable without a showing of secondary meaning.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice, and that the Application to register the mark ROCK THE CURE be allowed to issue a registration.

Respectfully submitted,

Dated: August 13, 2008

By: /s/ Jill M. Pietrini  
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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 13th day of August, 2008.

/s/Shellie Sager  
Shellie Sager

**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Karen A. Brennan  
225 South Sixth Street,  
Suite 3500  
Minneapolis, Minnesota 55402

on this 13th day of August, 2008.

/s/Shellie Sager  
Shellie Sager

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