

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

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88 TEES HAWAII, INC. :
: :
Opposer, :
: :
v. :
: :
EIGHTY-EIGHT, LLC :
: :
Applicant. :
-----X

78830750
Opposition No. 91183722

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, Virginia 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Eighty-Eight, LLC, as and for its Answer to the Notice of Opposition, responds to the allegations therein as follows:

1. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Notice of Opposition and therefore denies the same.
5. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Notice of Opposition and therefore denies the same.
6. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Notice of Opposition and therefore denies the same.



7. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Eighty-Eight admits that the electronic records of the U.S. Patent and Trademark Office reflect that title in and to U.S. Registration No. 2,543,892 issued on March 5, 2002 is in the name of Opposer. Eighty-Eight further admits that said Registration lists "T-Shirts" and designates that "Tees" is disclaimed.

9. Eighty-Eight admits that Opposer has submitted a document attached as Exhibit A to the Notice of Opposition, the veracity or authenticity of which is unknown.

10. Eighty-Eight submits that the allegations of paragraph 10 constitute a legal thesis and no response is necessary.

11. Eighty-Eight admits that U.S. Registration No. 2,543,892 lists "T-Shirts" alone.

12. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Notice of Opposition and therefore denies the same.

13. Admitted.

14. Eighty-Eight admits that as of November 15, 2007, the subject application was amended in Class 025 to seek registration of its stylized "88" trademark for "Clothing marketed as goods associated with a stock car racing team, namely, sweatshirts, sweat pants, sweat suits, warm-up suits, shirts, sport shirts, golf shirts, T-shirts, tank tops, sweaters, dresses, skirts, jerseys, long pants, sport shorts, shorts, bathing suits, pants, jackets, coats, hats, caps, bandanas, visors, belts, suspenders, head bands, wrist bands, socks, hosiery, footwear, gloves, scarves, neckties, raincoats, ponchos, pajamas, night shirts, night gowns and robes; masquerade costumes, namely, replica driver suits, replica driver helmets and baseball uniforms; infant wear; and cloth baby bibs not of paper" based on intent-to-use.

15. Admitted.

16. Admitted.

17. Admitted.

18. Eighty-Eight admits that ownership in and to the subject application was assigned from DEJ Holdings, LLC to Eighty-Eight on or about February 12, 2008.

19. Eighty-Eight admits that on or about February 12, 2008, no statement of use had been filed in connection with the subject application. Eighty-Eight denies that there was not an ongoing and existing business with regard to the manufacturing, sale or distribution of the goods

set forth in paragraph 14 of the Notice of Opposition and therefore, denies the remaining allegations of paragraph 19.

20. Denied.

21. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Notice of Opposition and therefore denies the same.

22. Eighty-Eight admits that "88" is the dominant portion of the mark of U.S. Registration No. 2,543,892. Eighty-Eight denies the remaining allegations of paragraph 22 of the Notice of the Opposition.

23. Denied.

24. Admitted.

25. Admitted.

26. Denied.

27. Eighty-Eight submits that the allegations of paragraph 27 constitute a legal thesis and no response is necessary.

28. Denied.

29. Denied.

30. Denied.

31. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Notice of Opposition and therefore denies the same.

32. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Notice of Opposition and therefore denies the same.

33. Denied.

AFFIRMATIVE DEFENSES

1. The dominant portion of the mark of U.S. Registration No. 2,543,892, the Arabic numeral "88," is so diluted due to third party use that Opposer may rely upon its registration and common law rights only to prevent the registration of virtually identical marks for virtually identical goods.

2. The mark of U.S. Registration No. 2,543,892 is not "famous" as that term is defined under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

3. Eighty-Eight's use of the trademark of the subject application is necessary to connote the AMP Energy/National Guard Chevrolet car driven by Dale Earnhardt Jr. in the NASCAR Sprint Cup Series which is associated with all of the goods listed in the application. As such, said use amounts to a fair use of the Arabic numeral "88" and does not suggest any association with or sponsorship, endorsement or approval by Opposer.

4. Opposer's claims are barred in whole or in part for failure to state a claim upon which relief may be granted.

Respectfully submitted,

EIGHTY-EIGHT, LLC



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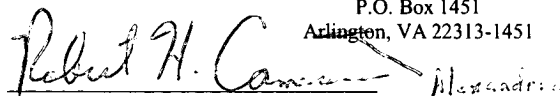
Attorneys for Applicant

Certificate of Mailing
Date of Deposit: June 2, 2008

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

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, VA 22313-1451

on June 2, 2008



Robert H. Cameron

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served on Opposer, this 2nd day of June, 2008, by sending same via postage prepaid, first class, certified mail return receipt requested to:

Martin E. Hsia, Esq.
Cades Schutte LLP
1000 Bishop Street, 12th floor, Suite 1200
Honolulu, Hawaii 96813



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