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

Proceeding	91183831
Party	Defendant EIGHTY-EIGHT, LLC
Correspondence Address	NICHELLE NICHOLAS LEVY ROBINSON BRADSHAW & HINSON SUITE 1900 101 NORTH TRYON STREET CHARLOTTE, NC 28246 NLEVY@RBH.COM
Submission	Answer
Filer's Name	Karl S. Sawyer, Jr.
Filer's e-mail	ksawyer@kennedycovington.com,msiuda@kennedycovington.com
Signature	/karl s sawyer, jr/
Date	06/23/2008
Attachments	ANSWER.pdf (4 pages)(98355 bytes)

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

The 88)	
)	
Opposer,)	
)	
v.)	Opposition No. 91183831
)	
EIGHTY-EIGHT, LLC)	
)	
Applicant.)	
)	

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

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

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

Preamble. Eighty-Eight is without information sufficient to form a belief as to the truth of the allegations of the preamble of the Notice of Opposition relating to the identity and composition of the Opposer and therefore denies the same. Eighty-Eight specifically denies that Opposer will be damaged by the registration of Eighty-Eight's applied-for mark.

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. Admitted.

3. Denied.

4. Denied.

5. Denied.

6. Eighty-Eight submits that the allegations of the first sentence of paragraph 6 constitute a statement of law and/or a legal conclusion for which no response is necessary. The allegations of the second sentence of paragraph 6 are denied.

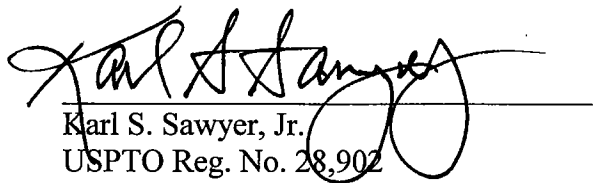
7. Denied.

AFFIRMATIVE DEFENSES

1. The dominant portion of the Opposer's asserted mark, the Arabic numeral "88," is and has been in use by third parties to a sufficient extent that the trademark significance of the Opposer's mark is diluted to the extent that any scope of protection to which it is entitled to is narrow and distinct from the distinct character and scope of protection to which Eighty-Eight's mark is entitled.
2. The Opposer's alleged mark 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.
5. Eighty-Eight, by and through its predecessor-in-interest, adopted and has used the applied-for mark in interstate commerce substantially throughout the United States continuously since a date and time prior to the Opposer's alleged date of first use, whereby the Opposer does not have standing to oppose nor a legally sufficient basis to oppose Eighty-Eight's applied-for mark.

Respectfully submitted,

EIGHTY-EIGHT, LLC



Karl S. Sawyer, Jr.
USPTO Reg. No. 28,902
KENNEDY COVINGTON LOBDELL &
HICKMAN, L.L.P.
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, NC 28202
(704) 331-5792
Fax (704) 353-3692
Email ksawyer@kennedycovington.com
Attorneys for Applicant

Of Counsel:

Alice C. Richey

Daniel V. Mumford

KENNEDY COVINGTON LOBDELL & HICKMAN, L.L.P.

Hearst Tower, 47th Floor

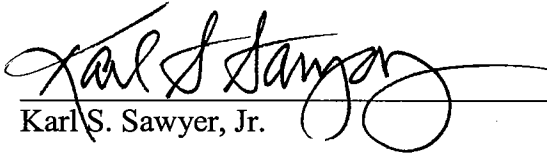
214 North Tryon Street

Charlotte, NC 28202

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION** was served on Opposer, this 23rd day of June, 2008, by sending same via postage prepaid, first class, certified mail return receipt requested to:

Michael N. Cohen
LAW OFFICE OF MICHAEL N. COHEN, P.C.
9025 Wilshire Blvd., Suite 301
Beverly Hills, CA 90211


Karl S. Sawyer, Jr.