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

Proceeding	91187063
Party	Defendant Power Corporation of Canada
Correspondence Address	JENNIFER A. VAN KIRK LEWIS AND ROCA LLP 40 N CENTRAL AVE STE 1900 PHOENIX, AZ 85004-4446 TRADEMARKS@LRLAW.COM
Submission	Answer and Counterclaim
Filer's Name	Jennifer A. Van Kirk
Filer's e-mail	trademarks@lrlaw.com
Signature	/JENNIFER A. VAN KIRK/
Date	12/01/2008
Attachments	063answer.pdf (6 pages)(173573 bytes)

Registration Subject to the filing

Registration No	2550156	Registration date	03/19/2002
Registrant	POWER FINANCIAL CREDIT UNION 2020 NW 150TH AVENUE PEMBROKE PINES, FL 33028 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 036. First Use: 2000/08/21 First Use In Commerce: 2000/08/21 All goods and services in the class are requested, namely: Banking
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Power Financial Credit Union,)	Opposition No. 91187063
)	
)	
Opposer,)	Mark: POWER FINANCIAL
)	
vs.)	
)	Serial No. 77/184,192
)	
Power Corporation of Canada,)	Published: April 22, 2008
)	
)	
Applicant.)	
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM

Applicant, the Power Corporation of Canada (“Applicant” or “PCC”), responds to Opposer Power Financial Credit Union’s (“Opposer”) Notice of Opposition to Applicant’s registration of the trademark shown in application Serial No. 77/184,192, as follows:

1. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 1 and, therefore, denies the same.
2. Applicant admits the allegations set forth in Paragraph 2.
3. Applicant admits that United States Patent and Trademark Office records list Opposer as the owner of Fed. Reg. No. 2,550,156 for the mark POWER 1 CREDIT UNION and design for banking in International Class 36. Applicant denies each and every remaining allegation set forth in paragraph 3.
4. Applicant admits that United States Patent and Trademark Office records indicate that Fed. Reg. No. 2,550,156 is principally registered.
5. Applicant admits that United States Patent and Trademark Office records indicate

that the terms "POWER" is not disclaimed in Fed. Reg. No. 2,550,156. Applicant denies that because the term "POWER" is not disclaimed this gives Opposer rights in this term, standing alone. Applicant also denies every other allegation set forth in paragraph 5.

6. Applicant admits that United States Patent and Trademark Office records indicate that Opposer filed Section 8 and 15 affidavits in connection with Fed. Reg. No. 2,550,156, on November 5, 2007, which appear to have been accepted on November 12, 2007. Applicant denies knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 6 as to whether the registration is incontestable.

7. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 7 and, therefore, denies the same.

8. Applicant denies that the POWER 1 CREDIT UNION mark is "prominently displayed" on Opposer's website. Applicant lacks knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 8 and, therefore, denies the same.

9. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 9 and, therefore, denies the same.

10. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 10 and, therefore, denies the same.

11. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 11 and, therefore, denies the same.

12. Applicant lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 12 and, therefore, denies the same.

13. Applicant admits that it filed a federal trademark application, assigned Application Serial No. 77/184,192, for the mark POWER FINANCIAL on May 17, 2007.

14. Applicant admits that the POWER FINANCIAL application covers “Business management; public relations services to businesses in the financial, insurance, investment, newspaper and printing fields” in International Class 35. Applicant denies each and every remaining allegation in Paragraph 14.

15. Applicant admits that the application, Ser. No. 77/184,192, was filed under Section 1(b) of the Lanham Act (intent to use) and therefore does not recite a date of first use for the mark. Applicant denies each and every remaining allegation set forth in Paragraph 15.

16. Applicant admits that the term “FINANCIAL” has been disclaimed in the application, Ser. No. 77/184,192. Applicant denies each and every remaining allegation set forth in Paragraph 16.

17. Applicant denies the allegations set forth in Paragraph 17.

18. Applicant admits that each party’s mark consists, in part, of the term “POWER.” Applicant denies each and every remaining allegation set forth in Paragraph 18.

19. Applicant denies the allegations set forth in Paragraph 19.

20. Applicant admits that it opposed Opposer’s Application Serial Nos. 78/973645 and 77/059168, claiming that consumers would likely become confused between Opposer’s POWER FINANCIAL CREDIT UNION mark and Applicant’s family of POWER formative marks.

21. Applicant admits that its oppositions were based, in part, on 15 U.S.C. § 1052(d).

22. Applicant denies each and every allegation set forth in Paragraph 22.

23. Applicant denies each and every allegation set forth in Paragraph 23.

AFFIRMATIVE DEFENSES

1. Opposer’s claims are barred in whole or in part by the doctrine of laches.

2. Opposer's claims are barred in whole or in part by the doctrine of acquiescence.

COUNTERCLAIM

Applicant hereby counterclaims to cancel on grounds of abandonment Opposer's Registration, No. 2,550,156, pursuant to Trademark Rule 2.106(b)(2)(i). As grounds in support of the counterclaim, Applicant alleges as follows:

1. Opposer is a Florida credit union with a business address of 2020 NW 150th Avenue, Pembroke Pines, Florida 33028.

2. Opposer filed a federal application for the mark POWER 1 CREDIT UNION on January 29, 2001, which federally registered on March 19, 2002.

3. Upon information and belief, Opposer Power 1 Credit Union and Pan Am Horizons Federal Credit Union merged in 2006, taking the name Power Financial Credit Union.

4. A review of the website cited in Paragraph 7 of the Notice of Opposition reveals no commercial use of the POWER 1 CREDIT UNION mark in connection with the services listed in the registration, No. 2,550,156.

5. Upon information and belief, Opposer discontinued use of the POWER 1 CREDIT UNION mark in 2006 with an intent not to resume use of the mark, though Opposer might attempt to make token use for purposes of these proceedings.


6. As a result, Opposer has abandoned its POWER 1 CREDIT UNION mark.

7. Regardless of the alleged incontestability of the POWER 1 CREDIT UNION mark, the mark is subject to cancellation for abandonment under 15 U.S.C. § 1064.

WHEREFORE, Applicant prays that Registration No. 2,550,156 be cancelled in whole.

DATED December 1, 2008.

Respectfully submitted,

By: 
Jennifer Van Kirk
Emily A. Bayton
Lewis and Roca LLP
40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4429
Attorneys for Power Corporation of Canada

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Counterclaim was served by First-Class Mail®, postage prepaid and via e-mail, upon the following:

Amy L. Wright, Esq.
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

Mailed this 1st day of December, 2008.