

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 3, 2009

Opposition No. 91188462

NITE LIFE OF SANTA BARBARA

v.

NITE LIFE CAR CLUB
ASSOCIATION

Amy Matelski, Paralegal Specialist

The answer filed by defendant is noted. The Board notes that defendant failed to include proof of service of a copy of the answer on plaintiff, as required by Trademark Rule 2.119(a). To expedite matters, a copy of the answer is included with plaintiff's copy of this order. Each party is reminded of its obligation to send a service copy of any paper filed herein to the adverse party, and to include proof of service when the paper is filed with the Board.

Conferencing, disclosure, discovery and testimony periods remain as previously set.

ESTTA Tracking number: **ESTTA269576**

Filing date: **03/02/2009**

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

Proceeding	91188462
Party	Defendant NITE LIFE CAR CLUB ASSOCIATION
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Date	03/02/2009
Attachments	RosasTTABresQ.pdf (3 pages)(48636 bytes)

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

	Nitelife of Santa Barbara,)	Date: 2 March 2009
5	Opposer)	Opposition #: 91188462
	v.)	Filed: 21 January 2009
	Nite Life Car Club Association)	
	(Nite Life of Ventura))	In re ServiceMark: Nite Life (with logo)
	Applicant.)	Ser #: 78/864,321
10)	Ref Applicant's <u>TradeMark</u> : Nite Life
	_____)	Reg #: 3,415,520

RESPONSE TO NOTICE OF OPPOSITION

15 Nite Life Car Club Association (Applicant), an unincorporated California association, having a business address of 2128 Ermine Ave, Ventura, CA 93003, phone 805-651-0868 hereby reaffirms its right and request to registration of the ServiceMark Nite Life and Design (Applicant's mark) that is the subject of application Serial Number 78/864,3219 (mistyped in Opposer's Notice as 78-8864321) published in the Official Gazette of TradeMarks on 23 September 2008, and requests that registration of the ServiceMark Nite Life with logo be allowed to Applicant in addition to Applicant's existing TradeMark registration.

20 In response to Opposer's allegations in the pending Notice of Opposition, Applicant asserts as follows:

- 25 1. Members of Opposer and Applicant since at least 1980 had adopted and continuously used the mark NITELIFE (one word) and/or NITE LIFE with and/or without the design/logo of "crossed daggers under a red rose" as well as with and/or without Santa Barbara or Ventura added thereto.
- 30 2. Opposer, Nitelife Santa Barbara, an unincorporated association, was formed in 1980 as a social club for car enthusiasts and was originally comprised of approximately twelve (12) members, four (4) of which are still members: Edmundo Rosas and Larry Rosas in the Ventura Group, and Frank Favela and Augie Trejo, in the Santa Barbara Group. It is unknown where the other eight originally (8) members went; however, there are now approximately nine (9) members in the Ventura Group and six (6) members in the Santa Barbara Group.

- 5 3. On or about Dec 2003, members, of the original twelve that lived in Ventura decided to continue their meetings in Ventura. Said members did not “resign” from the original group formed in Santa Barbara. The Santa Barbara Group continued to use Nitelife Santa Barbara with the crossed dagger design, and the Ventura Group used the very similar Nite Life Ventura with the identical crossed dagger design.
- 10 4. Both Opposer and Applicant have been using the same/similar marks Nitelife and Nite Life, respectively, since the early 1980’s. Both have Common Law rights of use and Applicant has a USPTO Registration for use of Nite Life as a TradeMark in sale of goods as well.
- 15 5. Opposer’s California State Registration only amplifies its Common Law rights in the mark but can not supercede any Federal Registration and has no effect beyond Common Law rights in any other state.
- 20 6. Opposer and Applicant both engage in numerous and regular community and charitable events in Santa Barbara and Ventura Counties in California to raise money for charity.
- 25 7. Opposer and Applicant both use and have used the mark and design to advertise their club services and charitable events on poster and other advertising and on clothing since at least as early as 1980.
- 30 8. Applicant’s mark is nearly identical to and its design is identical to Opposer’s mark and design, respectively.
- 35 9. Jamie Maldonado did not author/create the design and therefor could not convey any rights thereto without a written and executed Assignment from the actual creator thereof.
- 40 10. Opposer has no valid written, executed Assignment and therefor no exclusive License to use of the mark Nitelife/Nite Life.
11. There can be no possibility of confusion in use of a mark as Nitelife Santa Barbara for members in Santa Barbara with the mark Nite Life Ventura for members in Ventura.
12. Both Applicant’s and Opposer’s use of the mark and logo don’t interfere with the other’s use thereof in charitable activities, but in fact create a positive, joint use of a common mark from two long related groups in Santa Barbara and Ventura that jointly work in charitable activities.
13. Applicant suggests that USPTO consider offering a joint use of the ServiceMark to be granted to both the Santa Barbara Group and the Ventura Group. By such means neither party thereto could limit the expansion by members of either Group to other cities of California or the Nation for that matter.

14. In consideration, of Applicant's existing Federal Registration of the mark Nite Life as a Trademark, Applicant urges that it does indeed have the Exclusive Right to use the mark Nite Life as a TradeMark throughout the US. Therefor, it is an incompetent or false allegation that Applicant does not have that right.

15. Again has an existing USPTO Registered TradeMark of Nite Life. Therefor Opposer's comments in re "confusion" in a sale of Goods makes no sense.

WHEREFORE, Applicant prays that the Opposition be Denied and that Registration of the ServiceMark "Nite Life" and design logo therewith be allowed.

Respectfully submitted,
Nite Life Car Club Association
Nite Life of Ventura

/W.D.English/
Woodrow Douglas English
Attorney for Applicant