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

Proceeding	91192547
Party	Plaintiff Couch/Braunsdorf Affinity, Inc.
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Date	04/05/2010
Attachments	Answer, 91192547.pdf (4 pages)(130268 bytes)

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

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Opposition No. 91192547
Opposer,	:	
	:	Marks: PERKSTREET,
v.	:	PERKSTREET FINANCIAL
	:	
PERKSTREET FINANCIAL, INC.,	:	Application Serial Nos. 77/673,497,
	:	77/673,499
Applicant.	:	

**OPPOSER’S ANSWER TO APPLICANT’S
COUNTERCLAIMS AND AFFIRMATIVE DEFENSES**

Couch/Braunsdorf Affinity, Inc. (“Opposer”), hereby answers the counterclaims of Perkstreet Financial, Inc. (“Applicant”). For the Board’s convenience, the allegations in Applicant’s counterclaims are repeated below and are then followed by Opposer’s response.

Counterclaims

1. Opposer alleges ownership of US Registration Nos. 1,786,961, 2,580,914, 3,210,654, and 3,156,685 and has asserted those registrations against registration of Applicant’s US Serial Nos. 77/673497 and 77/673499 for the marks PERKSTREET and PERKSTREET FINANCIAL.

RESPONSE TO COUNTERCLAIM NO. 1:

Admitted .

2. The term “perk” has become known and used by retailers, the general public, and the media as a noun to define awards, benefits, incentives, or bonuses associated with engaging in certain activities. Consequently, “providing volume discounts for consumer products and services” would be perceived by the general public as providing “perks”. This term is incapable of source identification with respect to the designated services and is therefore generic and free for all to use to promote their own goods and services related to awards, benefits, incentives, or bonus programs. The word “perk” is therefore generic of a volume discount award given to consumers in exchange for buying certain products or services.

RESPONSE TO COUNTERCLAIM NO. 2:

Denied.

3. The term “perks cards” has become known and used by retailers, the general public, and the media as the common name for a card by which a consumer may obtain “perks” such as awards, benefits, incentives, and bonuses. Consequently, “providing volume discounts for consumer products and services via a magnetically controlled card” would be perceived by the general public as providing “perks” by means of a card that entitles the user to such “perks”. This term is incapable of source identification with respect to the designated services is therefore generic and free for all to use to promote their own goods and services related to awards, benefits, incentives, or bonus programs. The term “perks card” is therefore generic of a volume discount award given to consumers in exchange for buying certain products or services.

RESPONSE TO COUNTERCLAIM NO. 3:

Denied.

4. A term is deemed to be merely descriptive of goods or services if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, or function of the goods or services. The term “perk” immediately conveys the quality, characteristic, feature, or functions of a volume discount award given to consumers in exchange for buying certain products or services and is therefore merely descriptive of those services.

RESPONSE TO COUNTERCLAIM NO. 4:

Denied.

5. The term “perks card” immediately conveys the quality, characteristics, feature, or function of the services, namely, a card by which a consumer may obtain “perks” such awards, benefits, incentives, and bonuses. Consequently, “providing volume discounts for consumer products and services via a magnetically controlled card” would be perceived by the general public as providing “perks” by means of a card that entitles the user to such “perks” and is therefore merely descriptive of those services.

RESPONSE TO COUNTERCLAIM NO. 5:


Denied.

Affirmative Defenses

1. Applicant has not properly pleaded the basis for its purported counterclaims against Opposer’s registrations. As a result, Applicant has failed to state a claim upon which

relief can be granted. Fed. R. Civ. P. 12(b)(6). Opposer pleads this affirmative defense against each of Applicant's purported counterclaims.

Dated this 5th day of April, 2010.

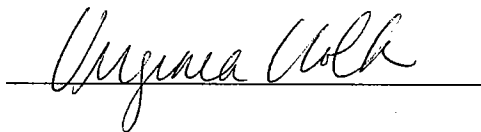
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
OPPOSER'S ANSWER TO APPLICANT'S COUNTERCLAIMS AND AFFIRMATIVE
DEFENSES was served on counsel for Opposer by first class mail on the 5th day of April, 2010
addressed as follows:

Susan M. Mulholland, Esq.
Gesmer Updegrove LLP
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Boston, MA 02109-4316

A handwritten signature in cursive script, appearing to read "Virginia Volk", is written over a horizontal line.