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

In the Matter of Trademark)
Application No. 77/644258)
Mark: **WATERMARK**)
Filed: January 6, 2009)
Published: November 24, 2009)
) Opposition No. 91193138
)
PATRICK J. KENNEDY, Opposer)
)
v.)
)
SEAN M. BURGESS, Applicant)

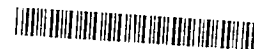
APPLICANT'S RESPONSE REGARDING NOTICE OF DEFAULT JUDGMENT

Applicant, Sean M. Burgess, hereby responds to the U.S. Trademark Trial and Appeal Board's Notice mailed February 17, 2010 informing Applicant that Applicant failed to file an Answer due February 1, 2010 in Opposition Case No. 91193138. Enclosed is a copy of Applicant's Answer which was mailed January 28, 2010. Also enclosed is a copy of the returned post card confirming receipt of the Answer by the Trademark Office. A copy of Applicant's Answer was mailed to Opposer's attorneys of record, Louis T. Pirkey and Wendy C. Larson, Pirkey Barber, LLP. Applicant requests confirmation from the Trademark Trial and Appeal Board acknowledging Applicant's timely filing of the Answer and confirming that default judgment will not be awarded to Opposer.

CERTIFICATE OF MAILING

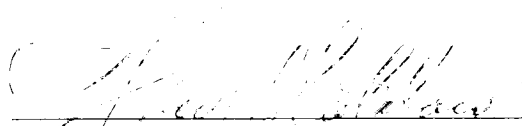
I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on February 18, 2010.


Frank J. Catalano



02-22-2010

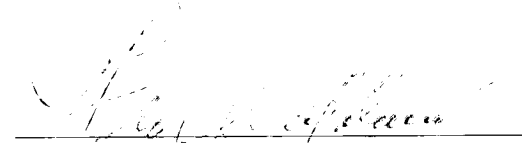
Date: February 18, 2010 Respectfully submitted,



Frank J. Catalano
GableGotwals
100 West Fifth Avenue, 10th Floor
Tulsa, Oklahoma 74103

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Response was served by first class mail deposited on February 18, 2010, and addressed to the Opposer's attorneys, Louis T. Pirkey and Wendy C. Larson, Pirkey Barber LLP, 600 Congress Avenue, Suite 2120, Austin, Texas 78701.



Frank J. Catalano

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

Mailed: February 17, 2010

Opposition No. 91193138

Patrick J. Kennedy

v.

Sean M. Burgess

Clara Vela, Paralegal Specialist

Answer was due in this case on February 1, 2010.

Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

Docket No. 006619. 00008
Appln/Reg. No.: 77/644, 258
Date Filed/Issued: 01/06/2009
Applicant: Burgess

The U.S. Patent & Trademark Office / Library of Congress acknowledges and has stamped hereon the date of receipt of items checked below which were mailed Jan. 28, 2010.

Trademark Office:

Trademark Application Type: _____
 Specimens (pages _____)
 Renewal - Sections 8 & 9 (pages _____)
 Affidavit, Sections 8 & 15 (pages _____)
 Amendment (_____ pages)
 Amendment to Allege Use (pages _____)
 Extension of Time for _____ months

Library of Congress:

Copyright Application Form: _____
 Specimens (_____ pages)

Other:

Authorization to Charge Deposit Account
 Check for \$ _____
 Assignment _____ Assignment Cover Sheet
 Power of Attorney _____
 Status Request _____

Sent via: _____ Express Mail No. _____
 1st Class Mail

Other: Applicant's Answer and Affirmative
Defenses to Notice of Opposition

Attorney: FJC By: LBR Due: _____



01-02-2010

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

In the Matter of Trademark)
Application No. 77/644258)
Mark: **WATERMARK**)
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Opposition No. 91193138

PATRICK J. KENNEDY, Opposer)

v.)

SEAN M. BURGESS, Applicant)

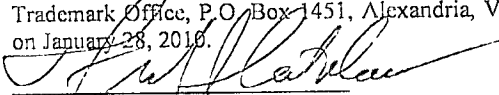
**APPLICANT'S ANSWER AND AFFIRMATIVE
DEFENSES TO NOTICE OF OPPOSITION**

Applicant, Sean M. Burgess, hereby answers the numbered paragraphs of the Notice of Opposition against its Application No. 77/644,258 for the mark, WATERMARK, as follows.

1. Applicant lacks information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations.
2. Applicant lacks information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations.
3. Applicant denies the allegations. The United States Patent & Trademark Office database includes over 30 live registered marks that include the term, WATERMARK.

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on January 28, 2010.


Frank J. Catalano

4. Applicant denies the allegation that Opposer's WATERMARKS Marks have become distinctive and recognized by consumers. Applicant lacks information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the allegations.
5. Applicant denies the allegation.
6. Applicant denies the allegation.
7. Applicant admits that Opposer owns the six U.S. registrations listed and that Opposer filed a Section 8 affidavit and Section 9 renewal for Reg. No. 2067410. Applicant also admits that Opposer owns intent-to-use application Ser. No. 77/025912. Applicant lacks information sufficient to form a belief as to the truth of whether Opposer has any common law rights in the marks or whether any or all of the registrations listed are valid and subsisting.
8. Applicant admits the allegations.
9. Applicant denies the allegation.
10. Applicant denies the allegations.
11. Applicant admits the allegation. Applicant does not need Opposer's permission or approval to use or register Applicant's mark.
12. Applicant denies the allegation.
13. Applicant denies the allegation.
14. Applicant denies the allegations.

AFFIRMATIVE DEFENSES

First

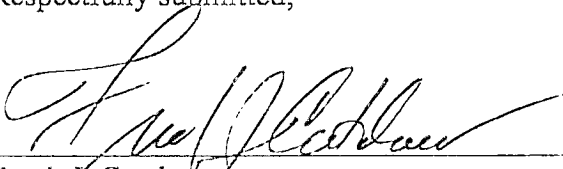
The Applicant's mark and the Opposer's alleged mark are not identical nor are they confusingly similar.

Second

The Applicant's services are not related to Opposer's goods and services for which the Opposer uses and has registered or applied to register his WATERMARK Marks.

Date: January 28, 2010

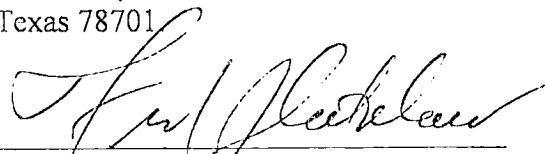
Respectfully submitted,



Frank J. Catalano
GableGotwals
100 West Fifth Avenue, 10th Floor
Tulsa, Oklahoma 74103

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Answer and Affirmative Defenses to Notice of Opposition was served by first class mail deposited on January 28, 2010, and addressed to the Opposer's attorneys, Louis T. Pirkey & Wendy C. Larson, Pirkey Barber LLP, 600 Congress Avenue, Suite 2120, Austin, Texas 78701



Frank J. Catalano