

**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 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,



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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