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

Proceeding	91197827
Party	Defendant Itility Solutions, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MARYVILLE DATA SYSTEMS, INC.,)
)
) Mark: ITILITY SOLUTIONS
Opposer,) Serial No. 77/902,616
) Opposition No. 91197827
v.)
)
ITILITY SOLUTIONS, LLC,,)
)
)
)
Applicant.)
_____)

ANSWER

COMES NOW, the Applicant, Itility Solutions, LLC (“Applicant”) to Answer the Notice of Opposition. Each and every allegation in the Notice of Opposition that is not specifically admitted below is denied. Applicant specifically denies any damage to Opposer from the registration of the mark shown in application Serial No. 77/902,616. No response is made to the first two introductory paragraphs. The numbered allegations will be answered below:

1. Opposer is now, and has been for many years, engaged in, among other activities, services comprising the implementation of information technology essential to the operation of the business to which it is applied. Opposer offers computer and information technology consultation services that are specifically tailored to its business customers' operational organizations as they relate to enterprise management software, database management software, middleware, packaged application software, custom application management software, and data management; and focus on a customer's particular business needs in addressing and managing core information technology operational disciplines. Plaintiff's customers benefiting from these services span multiple industries such as manufacturing, health care, distribution, government and telecommunications.

RESPONSE:

Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, denies the same.

2. Opposer has used, and continues to use, the mark ENTILITY as a designator to identify itself as the source of goods and services for integrating complex technology infrastructure and software solutions.

RESPONSE:

Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2 and, therefore, denies the same.

3. Opposer is the owner of U.S. Trademark Registration No. 2,724,891 for the mark ENTILITY covering services for procurement, namely, purchasing computer hardware and software (Class 35); computer hardware installation (Class 37); computer education training (Class 41); and Computer consultation in the nature of providing consultation in the field of computer information technology as it relates to enterprise management software, database management software, middleware, packaged application software, custom application management software, and data management; and installation of computer software (Class 42).

RESPONSE:

Admitted.

4. Opposer has used, and continues to use, the mark ENTILITY PLAYBOOK as a designator to identify itself as the source of goods and services for computer information systems management trouble shooting and best practices implementation.

RESPONSE:

Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the same.

5. Opposer is the owner of U.S. Trademark Registration No. 3,141,660 for the mark ENTILITY PLAYBOOK covering electronic publications, namely, reference manuals and guides in the field of information systems management trouble shooting and best practices implementation recorded on computer media (Class 9) ; and printed reference manuals and guides in the field of information systems management trouble shooting and best practices implementation (Class 16).

RESPONSE:

Admitted.

6. Management of a company's computer information systems and its application software is a critical component of the company's overall operations, and computer information systems are generally integral to a company's core functions such as business management, employee efficiency, use of application software and sales information. That is, business management, employee efficiency, use of application software and sales information draws heavily upon computer information systems resources and management of application software.

RESPONSE:

Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6 and, therefore, denies the same..

7. Applicant's Mark includes the confusingly similar word "ITILITY", and the application describes services consisting of "business management and business consulting services in the field of public utilities and energy industry".

RESPONSE:

Applicant admits that it has applied to register the mark ITILITY SOLUTIONS.

Applicant further admits that the listing of goods and services associated with its application is "business management and business consulting services in the field of public utilities and energy industry." Applicant denies the remaining allegations of Paragraph 7.

8. Business management and business consulting services are related to services comprising management of a company's computer information systems and could be reasonably assumed to be provided by the same source.

RESPONSE:

Denied.

9. Applicant filed its application on December 30, 2009, alleging a date of first use on January 30, 2009, long after the use date of Opposer's ENTILITY and ENTILITY PLAY BOOK marks.

RESPONSE:

Applicant admits that it filed its application to register the ITILITY SOLUTIONS mark on December 30, 2009 and that it alleged a first use date of January 30, 2009. Applicant is

without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 9 and, therefore, denies the same.

10. Applicant's Mark was filed long after the registration dates of Opposer's ENTILITY and ENTILITY PLAYBOOK registrations.

RESPONSE:

Applicant admits that its application for the ITILITY SOLUTIONS mark was filed after Opposer's ENTILITY and ENTILITY PLAYBOOK marks were registered. Applicant denies the remaining allegations of Paragraph 10.

11. Applicant's mark ITILITY SOLUTIONS, when used in connection with the services set forth in its application, is confusingly similar to Opposer's use of its ENTILITY and ENTILITY PLAYBOOK marks, and registration of Applicant's mark and continued use by it with its services is likely to cause confusion, mistake and deception. Customers are likely to mistakenly believe that Applicant's services are connected with Opposer's goods and services. Applicant's use of its mark interferes with Opposer's use of its ENTILITY and ENTILITY PLAYBOOK marks, and continued use or registration of Applicant's mark will seriously damage Opposer.

RESPONSE:

Denied.

12. The registration of Applicant's Mark would grant Applicant rights to which it is not entitled, and would be inconsistent with the prior and established rights of Opposer in its ENTILITY and ENTILITY PLAYBOOK trademark rights under common law and in its registered trademarks.

RESPONSE:

Denied.

AFFIRMATIVE DEFENSES

Without admitting any of the allegations of the Notice of Opposition, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The alleged acts do not result in a likelihood of confusion or trademark infringement.

SECOND AFFIRMATIVE DEFENSE

Applicant' use of the term "Itility" in not likely to cause confusion as to source, sponsorship, or affiliation.

THIRD AFFIRMATIVE DEFENSE

Opposer has not suffered any damages as a result of the acts alleged to have been committed by Applicant.

FOURTH AFFIRMATIVE DEFENSE

Applicant has priority because it used its ITILITY SOLUTIONS mark in commerce in connection with its management and business consulting services before Opposer used its ITILITY mark in connection with business management and consultation.

ITILITY SOLUTIONS, LLC.

By its Counsel

Dated: April 22, 2010

s/Elizabeth Zidones/

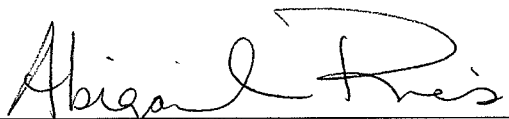
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER was served, via first-class mail, postage prepaid to:


Glenn K. Robbins II
One North Brentwood Blvd., Suite 1000
St. Louis, Missouri 63105

this 22nd day of April, 2011.


Abigail Ries

CERTIFICATE OF FILING

I hereby certify that this ANSWER is being filed electronically with the United States Patent and Trademark Office's Electronic System for Trademark Trial & Appeals (ESTTA) on this 22nd day of April, 2011.


Abigail Ries