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

Proceeding	91200650
Party	Defendant Vantage Hospitality Group, Inc.
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Date	08/25/2011
Attachments	Answer.pdf (4 pages)(122042 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MARKET AMERICA, INC.

Opposer

Opposition No. 91200650

Serial No. 85145907

VANTAGE HOSPITALITY GROUP, INC.

Applicant

ANSWER AND AFFIRMATIVE DEFENSES

Comes now the Applicant, VANTAGE HOSPITALITY GROUP, INC., through counsel, and answers the Notice of Opposition in this action as follows:

1. Applicant admits that it filed service mark application serial no. 85/145,907 on October 6, 2010 ("Application") to register the mark "THE UNFRANCHISE" ("Applicant's Mark"). However, the initial description of services read as follows:

"Management and consultation services in the field of hotel, motel and restaurant licensing and branding; assisting with the establishment of hotel, motel and restaurant franchises; aiding others in the establishment, consultation and operation of hotels, motels and restaurants"

2. Admitted that the Application was based on Applicant's intent to use the mark. Denied that Applicant did not have actual use of Applicant's Mark as a service mark in connection with the services identified in the Application at the time the Application was filed.

3. Admitted.

4. Applicant is without knowledge as to the truth or falsity of the allegations made in paragraph 4, and therefore demands strict proof thereof.

5. Applicant is without knowledge as to the truth or falsity of the allegations made in paragraph 5, and therefore demands strict proof thereof.
6. Applicant admits that the mark THE UNFRANCHISE in Opposer's cited registration is identical to the mark for which Applicant seeks registration. However, Applicant denies that the goods and/or services of Opposer and Applicant are at all related.
7. Denied.
8. Denied.
9. Denied.
10. WHEREFORE, Applicant respectfully request that the relief requested by Opposer be denied.

AFFIRMATIVE DEFENSES

1. Opposer is guilty of unclean hands in the matter due to its failure to take action against the Applicant sooner.
2. Opposer is guilty of laches in the matter due to its failure to take action against the Applicant sooner.
3. Opposer is barred by the doctrine of estoppel in the matter due to its failure to take action against the Applicant sooner.
4. Opposer is guilty of acquiescence in the matter due to its failure to take action against the Applicant sooner.
5. Applicant only uses Applicant's Mark in advertising to potential association members and/or franchisees. Therefore, the channels of trade in which the respective marks of the parties are used are dissimilar, such that there is no likelihood of confusion.

6. Opposer is guilty of laches in the matter due to its failure to take action against the Applicant sooner.
7. Opposer is guilty of estoppel in the matter due to its failure to take action against the Applicant sooner.
8. Opposer is guilty of acquiescence in the matter due to its failure to take action against the Applicant sooner.
9. Opposer is not the owner of the cited registration number 2,011,502, as that registration is owned by an entity by the name of "Market America"
10. Cited registration number 2,011,502 is invalid as the actual owner of the mark, has never been used by Opposer.
11. Cited registration number 2,011,502 is invalid for fraud on the U.S. Patent and Trademark Office as the Applicant for, and owner of, that registration, "Market America", is not the owner of the registered mark.
12. Opposer fails to state a claim upon which relief can be granted.

WHEREFORE, Applicant requests that Opposer be denied all relief requested in the Notice of Opposition.

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/Kevin P. Crosby
Kevin P. Crosby
GrayRobinson, P.A.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile and U.S. Mail on this 26th day of August, 2011 to Ryan S. Luft, 1302 Pleasant Ridge Road, Greensboro, NC 27409.

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By: /Kevin P. Crosby _____
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