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

Proceeding	91207832
Party	Defendant AFX Lighting, Inc.
Correspondence Address	MICHELE S. KATZ ADVITAM IP, LLC 160 N WACKER DR CHICAGO, IL 60606-1633 mskdocket@advitamip.com;mkatz@advitamip
Submission	Answer
Filer's Name	Michele S. Katz
Filer's e-mail	mskdocket@advitamip.com
Signature	/Michele S. Katz/
Date	12/14/2012
Attachments	Answer.pdf (5 pages)(640640 bytes)

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

Interline Brands, Inc.,)	
)	
Opposer,)	Opposition No. 91207832
)	
v.)	Mark: AFX LIGHTING YOUR
)	VISION
AFX Lighting, Inc.)	
)	Serial No. 85624393
Applicant.)	

ANSWER

Applicant, AFX Lighting, Inc. by its attorneys, hereby submits its Answer to the Notice of Opposition filed by Opposer, Interline Brands, Inc. as follows, with the following numbered Paragraphs corresponding to the numbers of the Paragraphs of the Notice of Opposition.

1. Applicant admits Opposer is shown as the owner of AF LIGHTING and AF LIGHTING and Design marks claiming the goods and services identified in Paragraph 1 in the current on-line records of the U.S. Patent and Trademark Office (USPTO).

2. Applicant admits Opposer is shown as the owner of U.S. Reg. No. 3,903,952 for the goods identified in Paragraph 2 in the current on-line records of the USPTO.

3. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 3 and therefore denies same.

4. Applicant admits Opposer is shown as the owner of U.S. Reg. No. 3,903,964 for the goods identified in Paragraph 4 in the current on-line records of the USPTO.

5. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 5 and therefore denies same.

6. Applicant admits Opposer is shown as the owner of U.S. Reg. No. 3,910,664 for the services identified in Paragraph 6 in the current on-line records of the USPTO.

7. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 7 and therefore denies same.

8. Applicant admits Opposer is shown as the owner of U.S. Reg. No. 3,910,668 for the services identified in Paragraph 8 in the current on-line records of the USPTO.

9. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 9 and therefore denies same.

10. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 10 and therefore denies same.

11. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 11 and therefore denies same.

12. In Paragraph 12, Applicant is without knowledge or information sufficient to form a belief as to “Opposer’s rights in and to its marks” and therefore denies the same. Applicant denies that it filed “the AFX Lighting Your Vision mark”. Applicant admits that it filed an application to register the mark AFX LIGHTING YOUR VISION & Design for electric lighting fixtures on May 14, 2012, which was assigned Serial No. 85/624,393.

13. Applicant admits the allegations of Paragraph 13.

14. Applicant denies the averments of Paragraph 14.

15. Applicant denies the averments of Paragraph 15.

16. Applicant denies the averments of Paragraph 16.

17. Applicant denies the averments of Paragraph 17.

18. Applicant denies the averments of Paragraph 18.

19. Applicant denies the averments of Paragraph 19.

20. Applicant denies the averments of Paragraph 20.

21. Applicant is without knowledge or information sufficient to form a belief as to Opposer's use in the same or similar fields as Applicant and therefore denies the same. Applicant denies the remaining averments of Paragraph 21 as well.

22. Applicant denies the averments of Paragraph 22.

23. Applicant denies the averments of Paragraph 23.

24. Applicant denies the averments of Paragraph 24.

25. Applicant admits Opposer has attached an Exhibit A consisting of certain pages from the USPTO's electronic database records, but does not agree to their authenticity or completion at this time.

As and for Affirmative Defenses, Applicant states as follows:

FIRST AFFIRMATIVE DEFENSE

As a first and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claims are barred from recovery due to the fact that no likelihood of confusion, mistake or deception exists between Applicant's mark and Opposer's marks.

SECOND AFFIRMATIVE DEFENSE

As a second and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that Opposer's claim is barred from recovery due to the fact that Applicant's mark, including the distinctive design elements, is not confusingly similar to Opposer's marks, including their distinctive design elements, in appearance, sound, meaning, or overall commercial impression.

THIRD AFFIRMATIVE DEFENSE

As a third and separate affirmative defense, Applicant is informed and believes, and on this basis asserts that there is no likelihood of confusion because the USPTO did not cite Opposer's marks as a bar or refusal to registration of Applicant's mark after considering the reality of the marks existing simultaneously in the marketplace.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be rejected and that Applicant's mark be allowed to proceed to registration.

Respectfully submitted,

By: /s/ Michele S. Katz

Michele S. Katz
ADVITAM IP, LLC
160 N. Wacker Drive
Chicago, IL 60606
Tel: (312) 332-7710
Fax: (312) 332-7701
Email: mkatz@advitamip.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Answer & Affirmative Defenses to Opposer's Notice of Opposition was served upon Opposer by electronic mail, on this 14th day of December, 2012, addressed to:

Elizabeth G. Borland
Promenade II, Suite 3100
1230 Peachtree St., NE
Atlanta, GA 30309
Email: egborland@sgrlaw.com

Attorney for Opposer

/s/ Michele S. Katz
Michele S. Katz