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

Proceeding	91208481
Party	Defendant Dilbeck, Mike
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Date	01/22/2013
Attachments	Answer.pdf (4 pages)(75532 bytes)

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

Blackbaud, Inc.)
)
 Opposer,)
)
 v.) Opposition No. 91208481
)
Mike Dilbeck)
)
 Applicant.)
-----)

APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, Mike Dilbeck, by and through Counsel, Chad N. Pfister, for his answer to the Notice of Opposition filed by Blackbaud, Inc. against application for registration of Mike Dilbeck's trademark EVERY|DAY HERO, Serial No. 85/451,577 filed October 29, 2011, and published in the Official Gazette on October 12, 2012, pleads and avers as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 1 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.
2. Applicant admits the allegations contained in paragraph 2 of the Notice of Opposition.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 3 of the Notice of Opposition.

Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. Applicant acknowledges that an Application with Serial No. 85/660,383 has been filed by Opposer, and that such application speaks for itself. Applicant further states that pursuant to an Office Action by the Examining Attorney on said Application all further action on said application was suspended on October 12, 2012 and to Applicant's best knowledge and belief no steps have been taken to withdraw the suspension and that said suspension continues in full force and effect as of this date.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 5 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

6. Applicant denies the allegations contained in paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations contained in paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations contained in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in paragraph 10 of the Notice of Opposition.

FURTHERMORE, Applicant sets forth the following in support of its position:

11. Opposer fails to state a claim upon which relief can be granted.
12. Applicant's mark is unique and distinctive.
13. The work in Applicant's mark and Opposer's mark are different.
14. Applicant's mark and Opposer's mark are different in appearance.
15. Applicant's mark and Opposer's mark are different in spelling.
16. Applicant's mark and Opposer's mark create different commercial impressions.
17. Applicant's services and Opposer's services are not marketed through the same channels of trade.
18. Applicant does not provide software services or website services.
19. There is no likelihood of confusion, mistake or deception because, Applicant's mark and Opposer's mark are not confusingly similar.
20. Applicant's mark and Opposer's mark are not likely to cause confusion, mistake or deception to purchasers as to the source of Opposer's goods or services.
21. Applicant's mark and Opposer's mark are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant.
22. Applicant reserves the right to plead any additional defenses or averments which might become known to Applicant through the discovery process.

WHEREFORE, having fully answered Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial Number 85/451,577 in the United States Patent and Trademark Office.

Respectfully Submitted,



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ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on the 22nd day of January, 2013, a true copy of the foregoing Applicant's Answer to Notice of Opposition and Affirmative Defenses was served by mailing postage pre-paid a copy of said pleading to: Christopher L. Sorey, Wyrick Robbins Yates & Ponton, LLP, 4101 Lake Boon Trail, Suite 300, Raleigh, North Carolina 27607, Attorneys for Opposer.



CHAD N. PFISTER

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trails and Appeals (ESTTA) on this 22nd day of January, 2013.



CHAD N. PFISTER