

ESTTA Tracking number: **ESTTA544297**

Filing date: **06/20/2013**

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

Proceeding	91210195
Party	Defendant Experience Based Learning, Inc.
Correspondence Address	CRAIG P. THOMAS RENO & ZAHM LLP 2902 MCFARLAND RD STE 400 ROCKFORD, IL 61107-6801 trademark@renozahm.com
Submission	Answer
Filer's Name	Daniel E. Kattman
Filer's e-mail	tmadmin@reinhardtllaw.com
Signature	/dek/
Date	06/20/2013
Attachments	Zip Tamarack Answer to Notice of Opposition.pdf(200618 bytes)

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

ZIP IDAHO, LLC
An Idaho Limited Liability Company

Opposer,

v.

Opposition No. 91210195
Serial No. 85666695

EXPERIENCE BASED LEARNING, INC.
An Illinois Corporation,

Applicant.

APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION

Applicant, Experience Based Learning, Inc. ("Applicant"), by its attorneys, hereby answers the allegations set forth in the Opposer's Notice of Opposition as follows:

1. Applicant admits the information contained in Paragraph 1 of the Notice of Opposition.
2. Applicant denies that Opposer (a) has owned a canopy zip line tour business under the mark ZIP IDAHO mark since at least December of 2006; (b) coined the mark "Zip Idaho"; and (c) placed the mark in use in commerce at least as early as December 27, 2006. Applicant admits that Opposer filed an application to register the mark ZIP IDAHO on May 17, 2012 in application serial number 85/628,682 and admits that it filed an opposition against Opposer's application for ZIP IDAHO on December 28, 2012. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and

conclusions of law contained in Paragraph 2 of the Notice of Opposition and, therefore, denies the same.

3. Applicant admits that it opened a zip line business in Tamarack Idaho. Applicant admits it operates said business under the name "Tamarack Canopy Zipline Tour," and affirmatively alleges that it also operates said business under the name "Zip Tamarack." Applicant admits that its website advertising for its Tamarack Canopy Zip Line Tour business includes use of the mark "Zip Tamarack." Applicant denies the remaining allegations and conclusions of law contained in Paragraph 3 of the Notice of Opposition.

4. Applicant admits that Opposer owns a canopy zip line tour business and uses the "Zip Idaho" mark. Applicant denies the remaining allegations and conclusions of law contained in Paragraph 4 of the Notice of Opposition.

5. Applicant admits that Opposer applied to register its Zip Idaho mark with the U.S. Trademark Office on May 17, 2012, application no. 85/628,682. Applicant admits that it opposed such registration on December 28, 2012, Opposition No. 91/208,645. Applicant's Notice of Opposition speaks for itself and Applicant denies any allegations or conclusions of law to the extent they are inconsistent with said Notice of Opposition.

6. Applicant admits that it alleges a first use date in its Zip Tamarack Application of at least as early as June 22, 2009. Applicant is without knowledge or information sufficient to form a belief as to whether Opposer does or does not concede that such first use date is actually as early as June 2009. Applicant denies the remaining allegations and conclusions of law contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to whether Opposer does or does not deny that there will be any likelihood of confusion between

Zip Idaho and Zip Tamarack. Applicant denies that Zip Idaho is the senior mark and denies the remaining allegations and conclusions of law contained in Paragraph 7 of the Notice of Opposition.

8. Applicant admits that the services it identified in its Zip Tamarack Application are related to the services provided by Opposer. Applicant denies that said services are identical.

9. Applicant denies the allegations and conclusions of law contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations and conclusions of law contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations and conclusions of law contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations and conclusions of law contained in Paragraph 12 of the Notice of Opposition.

Relief Requested

Registrant respectfully requests that Opposer's requests for relief be denied, and that this Opposition proceeding be dismissed with prejudice.

Affirmative Defenses

1. Opposer's claim for relief is barred by the doctrine of unclean hands, as Opposer's Application for the ZIP IDAHO mark is fraudulent, and based solely on use pursuant to a license from Applicant.

2. Opposer's claim is barred because its application to register the ZIP IDAHO mark is void pursuant to TMEP §1201.02(b). Opposer was not the owner of the ZIP IDAHO trademark at the time it filed Application Serial No. 85628682. Opposer's use of the mark was

pursuant to a license agreement with Applicant which provides, "Owner [Opposer] shall pay to EBL ten-percent (10%) of the monthly Gross Revenues generated from the Zip Line/ Canopy Tour **for licenses fee**, trade source information, and upfront capital investment risk." (Agreement at 2) (emphasis added).

3. Opposer's claims are barred because Opposer committed fraud on the PTO. Opposer made material misstatements under oath regarding its ownership and right to use the ZIP IDAHO mark in its application for registration. Upon information and belief, Opposer knew these statements were false at the time Opposer made them.

4. Opposer is estopped from opposing Applicant's registration based on its application for and use of the ZIP IDAHO mark, as its only use of the ZIP IDAHO mark was pursuant to a license from Applicant and therefore its application for registration is void.

Respectfully submitted,



Daniel E. Kattman
Wisconsin State Bar Member.
Attorney for Applicant
Dated: June 20, 2013

Daniel E. Kattman
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail on June 20, 2013 in an envelope with sufficient postage addressed to:

Stuart J. Ford
ZEMAN-MULLEN & FORD, LLP
233 White Spar Road
Prescott, AZ 86303
UNITED STATES
sford@zmfiplaw.com

By: _____



Daniel E. Kattman

9956896