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

Proceeding	91211637
Party	Defendant Andre Henderson d/b/a Flavorz
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Attachments	2013-0826_WHRH_Opposition_Answer_AF.pdf(712845 bytes)

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

Craig R. Bell, individual d/b/a
DESTINEE - EPLORIUMS, Opposer

Opposition No. 91211637

v.

Application Serial No. 85/726991

Andre Henderson, individual

ANSWER

d/b/a FLAVORZ, Applicant

TO THE COMMISSIONER FOR TRADEMARKS,
TRADEMARK TRIAL AND APPEAL BOARD:

Applicant, Andre Henderson, an individual, d/b/a FLAVORZ ("Applicant"), herein files this Answer to the Notice of Opposition filed by Opposer, Craig R. Bell, individual, d/b/a DESTINEE - EPLORIUMS ("Opposer"), and denies each and every allegation by Opposer, except as specifically admitted below.

Addressing the particular parts of the Notice of Opposition, Applicant answers as follows:

In answer to Opposer's opening paragraph, Applicant is without knowledge or information sufficient to form a belief as to Opposer's statement of sole proprietorship, address, etc., therefore denies said statement. In answer to Opposer's statement that he "believes that he will be damaged" by registration of the application in issue, Applicant is without knowledge or information sufficient to form a belief as to Opposer's "belief," and on that basis denies same, further answering and denying that Opposer will be damaged by registration of the application in issue. The remainder of the opening paragraph, namely a recitation of the serial number of the

application in question, the description of goods recited in the application, and the filing date, to the extent that such allegations accurately reflect the public record, are admitted.

Turning to the numbered paragraphs:

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition, to the extent that same accurately reflect Applicant's name and address.
2. Applicant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 of the Notice of Opposition, and on that basis denies same.
3. As to the first sentence of Paragraph 3 of the Notice of Opposition, Applicant denies same as written, as Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on the basis that same contains allegations of law to which no answer is required. As to the second sentence of Paragraph 3, Applicant admits that an Exhibit A is attached to the Notice of Opposition, but otherwise denies this sentence.
4. As to the first sentence of Paragraph 4 of the Notice of Opposition, Applicant denies same as written, as Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on the basis that same contains allegations of law to which no answer is required. As to the second sentence of Paragraph 4, Applicant admits that an Exhibit B is attached to the Notice of Opposition, but otherwise denies this sentence.
5. As to the first sentence of Paragraph 5 of the Notice of Opposition, Applicant denies same as written, as Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on the basis that same

contains allegations of law to which no answer is required. As to the second sentence of Paragraph 5, Applicant admits that an Exhibit C is attached to the Notice of Opposition, but otherwise denies this sentence.

6. As to the first sentence of Paragraph 6 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same. As to the second sentence of Paragraph 6, Applicant admits that an Exhibit D is attached to the Notice of Opposition, but otherwise denies this sentence, as such exhibit in no way establishes the "use" referred to by Opposer.
7. As to the first sentence of Paragraph 7 of the Notice of Opposition, Applicant denies same as written, as Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on the basis that same contains allegations of law to which no answer is required. As to the second sentence of Paragraph 7, Applicant admits that an Exhibit E is attached to the Notice of Opposition, but otherwise denies this sentence.
8. As to the first sentence of Paragraph 8 of the Notice of Opposition, Applicant denies same as written, as Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on the basis that same contains allegations of law to which no answer is required. As to the second sentence of Paragraph 8, Applicant admits that an Exhibit F is attached to the Notice of Opposition, but otherwise denies this sentence.
9. As to Paragraph 9 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that

basis denies same. Further answering, Applicant notes that the allegations of Paragraph 9 appear to be in conflict with the allegations of Paragraph 6.

10. As to Paragraph 10 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same. Further answering, Applicant asserts that a “potentially” valuable reputation is not protectable.
11. As to Paragraph 11 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same.
12. As to Paragraph 12 of the Notice of Opposition, to the extent that same constitute allegations of fact, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same. To the extent that the allegations of Paragraph 12 constitute legal argument, same are improper and require no answer on the part of Applicant, but out of an abundance of caution same are denied on that basis as well.
13. As to Paragraph 13 of the Notice of Opposition, to the extent that same constitute allegations of fact, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same. To the extent that the allegations of Paragraph 13 constitute legal argument, same are improper and require no answer on the part of Applicant, but out of an abundance of caution same are denied on that basis as well.
14. As to Paragraph 14 of the Notice of Opposition, to the extent that same constitute

allegations of fact, Applicant is without knowledge or information sufficient to form a belief as to whether certain of said allegations are true, and on that basis denies same. To the extent that the allegations of Paragraph 14 constitute legal argument, same are improper and require no answer on the part of Applicant, but out of an abundance of caution same are denied on that basis as well. Further answering, Applicant affirmatively denies that his application, registration, and/or use of WORK HARD RIDE HARDER, including with the accompanying logo, is likely to cause confusion, mistake, or to deceive, such that the purchasing public is likely to believe that Applicant's mark is in any way associated with, connected with, sponsored, authorized or licensed by Opposer.

Further answering Paragraph 14, Opposer's allegations that the PTO has consistently rejected "other third-party applicants' attempts at registration of marks that encompass[es] the Ride Hard term by any other third-party other than Opposer," is false and denied. USPTO records directly belie this statement of Opposer. Attached as Exhibit A hereto is a list of trademark/service mark applications and/or registrations, from the USPTO database, which comprise the words RIDE HARD. Exhibit B hereto is a sub-set of that list, showing the "live" trademark/service mark applications/registrations with the USPTO.

Notably, the following applications/ registrations are currently "live," all containing the words RIDE HARD, in direct contravention to Opposer's statement in Paragraph 14 that there is an "absence of any other third-party registrations or use of the Ride Hard term in any sense":

SN 85918430 on RIDE HARD. RUN COOL.

RN 4301298 on LIVE FREE RIDE HARD

RN 4241209 on THE TEXAS COWGIRL RIDE HARD. LOOK GOOD. + design

RN 3785748 on WORK HARD RIDE HARD

As shown by the public record, the USPTO has in fact permitted multiple registration of other marks containing the terms RIDE HARD, in contravention to Opposer's false allegations to the contrary, said allegations being specifically denied.

15. As to Paragraph 15 of the Notice of Opposition, to the extent that same constitute allegations of fact, Applicant is without knowledge or information sufficient to form a belief as to whether said allegations are true, and on that basis denies same. To the extent that the allegations of Paragraph 15 constitute legal argument, same are improper and require no answer on the part of Applicant, but out of an abundance of caution same are denied on that basis as well. Further answering, Applicant denies that his use of WORK HARD RIDE HARDER will in any way interfere with Opposer's use of RIDE HARD, that Applicant's use will "dilute" Opposer's marks, and that use and/or registration of Applicant's mark will damage Opposer.
16. With regard to the allegations in Opposer's "Wherefore" paragraph, to the extent that same constitute allegations of fact, same are denied; to the extent that same constitute Opposer's "beliefs," Applicant is without knowledge or information sufficient to form a belief as to Opposer's "beliefs," and on that basis denies same, and specifically denies Opposer's request for denial of Applicant's application for registration.

Further answering, Applicant states:

17. Applicant asserts the affirmative defense of no likelihood of confusion between

Applicant's mark and any of Opposer's marks, registered or otherwise, and further affirmatively alleges that there has been and will not be any likelihood of confusion, mistake or deception, because *inter alia* Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

First, there is no identity between the word portion of Applicant's mark (WORK HARD RIDE HARDER) and the word portion of any of Opposer's pleaded marks, which all appear to contain some permutation of RIDE HARD.

Second, Applicant's mark comprises not only the words WORK HARD RIDE HARDER, but also a distinctive logo described as follows:

'The mark consists of a shield with two banners scrolled across the upper and lower parts, a crown above six stars across the top, and lines radiating outward.

The crest is superimposed over a pair of outstretched wings, and the term "WORK HARD" is at the top of the design, with the term "RIDE HARDER" along the bottom.'

Third, when the marks are considered in their whole, Applicant affirmatively states that there is no likelihood of confusion, because the marks considered as a whole are not confusingly similar. At least some of Opposer's marks have design elements, such as a stylized RIDE HARD, further distinguishing Applicant's mark from Opposer's marks.

18. Further answering, Applicant pleads the affirmative defenses of acquiescence, laches and/or estoppel, as Applicant has used the mark in the application in issue for a number of years, developing consumer recognition and goodwill therein, with no objection

thereto by Opposer.

19. Applicant further affirmatively alleges that there has been no, and that there is no likelihood of, dilution of any mark rights of Opposer's, by blurring or any other means, because Applicant's and Opposer's marks are not sufficiently similar; there are, upon information and belief, numerous other uses and registrations of third party marks containing the words RIDE HARD; Applicant did not intend any association with Opposer's mark, or any other third party mark; and upon information and belief, prospective purchasers of Applicant's goods do not associate Applicant's and Opposer's marks.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed.

Respectfully submitted,

Andre Henderson, an individual, d/b/a FLAVORZ, Applicant

By:  AUG. 26, 2013

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Attorney for Applicant

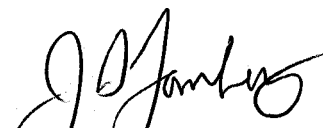
Proof of Service

Certificate of Filing

I hereby certify that this Answer to Opposition in Opposition No. 91211637, in connection with Application SN 85/726991, is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the United States Patent and Trademark Office on the date set out below.

August 26, 2013

Date



Jesse D. Lambert


Certificate of Service

I hereby certify that this Answer to Opposition in Opposition No. 91211637, in connection with Application SN 85/726991, is being duly served upon the Opposer by mailing a copy thereof via the U.S. Postal Service in a sealed envelope with first-class postage thereon, fully prepaid and addressed to Opposer as follows:

Craig R. Bell (Unrepresented)
973 Jamacha Road, Unit A
El Cajon, CA 92019

August 26, 2013

Date



Jesse D. Lambert

EXHIBIT A



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Current Search: ("ride hard")[ALL] docs: 27 occ: 124

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85918430		RIDE HARD. RUN COOL.	TSDR	LIVE
2	85906303		RIDEHARD.COM	TSDR	LIVE
3	85664256		RIDE HARD WINE LATER	TSDR	DEAD
4	85684061	4301298	LIVE FREE RIDE HARD	TSDR	LIVE
5	85561819	4241209	THE TEXAS COWGIRL RIDE HARD. LOOK GOOD.	TSDR	LIVE
6	78559467	3113948	RIDE HARD	TSDR	LIVE
7	78766018		DIESEL ENERGY DRINK RIDE HARD	TSDR	DEAD
8	78660719		RIDE HARD RIDE HAPPY	TSDR	DEAD
9	78584542	3055469	RIDE HARD	TSDR	LIVE
10	78563296		CHROMECOWBOYS LIVE LONG RIDE HARD	TSDR	DEAD
11	78561401		RIDE HARD	TSDR	DEAD
12	78401335		RIDE HARD, LOOK GOOD	TSDR	DEAD
13	78227004		RIDE HARD, RIDE SMART	TSDR	DEAD
14	77745550		RHR RIDE HARD RETARD	TSDR	DEAD
15	77643934	3785748	WORK HARD RIDE HARD	TSDR	LIVE
16	76608216		RIDE HARD RIDIN' WILD	TSDR	DEAD
17	75414574	2228180	RODEO GAL	TSDR	DEAD
18	75297302		RIDE HARD	TSDR	DEAD
19	75182513	2204344	RIDE HARD	TSDR	DEAD
20	75182512	2355543	HARD RIDER	TSDR	DEAD
21	75132290	2063436	RIDE HARD	TSDR	DEAD
22	75110675	2043831	RODEO MAN	TSDR	DEAD

23	75099230		RIDE HARD ROADMASTER	TSDR	DEAD
24	75099229	2236019	RIDE HARD	TSDR	DEAD
25	75055218	2157296	RIDE HARD	TSDR	DEAD
26	74702038	1981120	RIDE HARD TRANSCENDING THE COMPETITIVE MIND SET!	TSDR	LIVE
27	74564329	1961494	RIDE HARD	TSDR	LIVE

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Current Search: ("ride hard")[MN] and (live)[LD] docs: 8 occ: 16

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