

ESTTA Tracking number: **ESTTA577694**

Filing date: **12/19/2013**

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

Proceeding	91212921
Party	Defendant Gourmetgiftbaskets.com, Inc.
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Date	12/19/2013
Attachments	GBA00005.pdf(26562 bytes)

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

In the matter of Serial No. 85/750,595
Published in the Official Gazette on September 24, 2013

THE CO-EXECUTORS OF THE MICHAEL
J. JACKSON ESTATE,

Opposer,

GOURMETGIFTBASKETS.COM, INC.

Applicant.

ANSWER TO NOTICE OF
OPPOSITION AND AFFIRMATIVE
DEFENSES

Opposition No.: 91212921

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE
DEFENSES**

Applicant, GOURMETGIFTBASKETS.COM, INC., for its answer to the Notice of Opposition filed by The Co-Executors of the Michael J. Jackson Estate (Opposer) against application for registration of Applicant's trademark "Kingofpop.com and design", serial number 85/750,595 filed on October 10, 2012 and published in the official Gazette of September 24, 2013 (the "mark"), pleads and avers as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies

those allegations except that Applicant admits that Michael J. Jackson was, when alive, a musician of some notoriety.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies those allegations except that applicant admits that Michael J. Jackson was, when alive, a performer of some notoriety.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies those allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies those allegations.

6. Denied

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph of the opposition and therefore Applicant denies those allegations.

8. Admitted

9. Admitted

10. Denied, except that applicant admits that Section 2(a) of the Lanham Act 15 U.S.C. § 1052(a) states, in relevant part: "No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it (a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead..".

11. Denied

12. Denied

13. Admitted

14. Admitted

15. Denied

16. Denied

17. Denied

18. No answer is required as this paragraph is a request for relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

19. Opposer fails to state a claim upon which relief can be granted.

Second Affirmative Defense

20. Opposer lacks standing to bring this Opposition.

Third Affirmative Defense

21. The "King of Pop" nickname is a notional title that few people agree on who it should apply to or even what it means.

22. The King of Pop nickname is typically applied to a popular artist of the times.

22. The nickname "King of Pop" is not associated exclusively and/or solely with Michael J. Jackson.

23. The nickname "King of Pop" is a temporary title used by the public or the media to refer to multiple, unrelated parties (artists), therefore any rights of Opposer in and to this nickname are weak, at best, and therefore Opposer is entitled to either no or very limited protection in and to the nickname "King of Pop" since the nickname King of Pop does not refer exclusively to Opposer.

24. Applicant's use of its trademark "King of Pop and design" therefore does not falsely suggest a connection with Opposer.

Fourth Affirmative Defense

25. Applicant's applied for trademark includes not only the URL "Kingofpop.com" but also a very stylized and fanciful design element including particular colors; popcorn kernels and a "crown" over the letter "O" in "POP".

26. Applicant's applied for trademark is intended to be used and indeed is now in use with and only with the sale of popcorn available on-line and by telephone, facsimile and/or mail-order.

27. There is no likelihood that anyone will associate Applicant's applied for mark relative to the sale of popcorn with Michael J. Jackson and therefore, Applicant's "King of Pop and design" trademark when considered in connection with the sale of popcorn therefore does not falsely suggest a connection with Opposer.

WHEREFORE, Applicant requests that this opposition be dismissed and that Applicant's mark proceed to registration.

Dated: December 19, 2013

Respectfully submitted,

/DJB/

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Attorney for Applicant,
GOURMETGIFTBASKETS.COM, INC

CERTIFICATE OF SERVICE

I am a resident of the State of New Hampshire, over the age of eighteen years, and not a party to the within action. My business address is BOURQUE & ASSOCIATES PA, 835 Hanover Street Suite 301 Manchester, NH 03104. On December 19, 2013, I served the within document:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

By E-Mail to the person(s) listed below:

Joel R. Feldman
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Counsel for Opposer, THE CO-EXECUTORS OF THE MICHAEL J. JACKSON ESTATE

Executed on December 19, 2013, at Manchester, NH.

/DJB/

Daniel J. Bourque