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

Proceeding	91212996
Party	Defendant Pearl Enterprises, LLC
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Attachments	Pearl's Answer to Second Amended Notice of Opposition.pdf(34348 bytes)

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

117 NE 1ST AVENUE, LLC,

Opposer,

v.

PEARL ENTERPRISES, LLC,

Applicant.

Opposition No. 91212996

Mark: KAI TAK

Serial No. 86/002,539

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ANSWER TO NOTICE OF OPPOSITION

Applicant, Pearl Enterprises, LLC (“Pearl” or “Applicant”), by and through its undersigned attorneys in answer to the Notice of Opposition (the “Notice”) of the asserted Opposer, 117 NE 1st Avenue LLC (“Opposer”) states that Applicant has no direct knowledge of the legal status, address and authorization of or on behalf of the asserted Opposer as set forth in the preamble of the Notice of Opposition and thus demands strict proof of same. Applicant further denies knowledge of the allegation of damage and applicability of the sections of law set forth in the preamble.

In response to the numbered paragraphs of the Notice, Applicant responds as follows:

1. Applicant admits that U.S. Application Serial No. 86/066,384 is for a mark "KAI TAK" and design purportedly for "jewelry" in International Class 14. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining averments of paragraph 1; accordingly they are denied.
2. Applicant lacks knowledge or information sufficient to form a belief about the truth of the averments of paragraph 2; accordingly they are denied.
3. Denied.

4. Applicant admits that it filed U.S. Application Serial No. 86/002,539 on July 3, 2013, for the mark "KAI TAI" for "apparatus for acupuncture therapy; apparatus for magnet therapy" in International Class 10. Applicant denies the remaining averments of paragraph 4.

5. Denied.

6. Denied.

7. Applicant denies that Opposer has any legally protectable rights in the purported mark. Applicant also lacks knowledge or information sufficient to form a belief about the truth of the averments of paragraph 7; accordingly they are denied. By way of further response, the allegations of paragraph 7 are conclusions of law to which no response is required; accordingly they are denied.

8. Applicant denies that Opposer has any legally protectable rights in the purported mark. Applicant also lacks knowledge or information sufficient to form a belief about the truth of the averments of paragraph 8; accordingly they are denied. By way of further response, the allegations of paragraph 8 are conclusions of law to which no response is required; accordingly they are denied.

9. Applicant denies that Opposer has any legally protectable rights in the purported mark. Applicant also lacks knowledge or information sufficient to form a belief about the truth of the averments of paragraph 9; accordingly they are denied. By way of further response, the allegations of paragraph 9 are conclusions of law to which no response is required; accordingly they are denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Admitted that Opposer has not expressly authorized Applicant's application for registration of the mark "KAI TAK" but denied that Applicant requires any such authorization from Opposer because Opposer does not have any protectable or current rights in the mark "KAI TAK" or any confusingly similar marks. Accordingly, the remaining averments of paragraph 11 are denied.

17. Applicant lacks knowledge or information sufficient to form a belief about the truth of the averments of paragraph 12; accordingly they are denied.

18. Denied.

Additional Defenses

By way of further answer, Applicant responds as follows:

1. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

2. Opposer lacks prior rights in Applicant's applied-for mark.

3. Opposer has not used its purported "KAI TAK" mark.

4. Opposer has abandoned its purported "KAI TAK" mark.

5. Opposer is not the real party in interest.

6. Opposer is not a lawfully organized or existing entity and thus lacks standing to bring this opposition.

7. Opposer is not a lawfully organized or existing entity and thus is not a valid owner of Application Serial No. 86/066,384.

8. Various actions claimed in the name of Opposer in support of the opposition including the filing of same are not properly authorized on behalf of Opposer.

9. Opposer does not own a purported "KAI TAK" mark and thus lacks standing to bring this opposition.

10. Opposer's use, if any, of the purported "KAI TAK" mark at all times was unlawful, because Opposer has not been lawfully authorized to import, package, manufacture, sell or distribute the claimed acupuncture stimulation products.

11. Opposer's cited Application Serial No. 86/066,384 is invalid or unenforceable.

12. Applicant has at all times lacked an intent to deceive the USPTO in connection with any of its filings with the USPTO.

13. To the extent that any information in any of Applicant's filings with the USPTO could be construed as being false, Applicant believed such information to be true, such information is not material to Applicant's application, and such information is not likely to deceive the USPTO.

14. Applicant reserves the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Opposer's claims. These additional defenses cannot be articulated at this time due to the Applicant's failure to properly describe its claims with sufficient particularity in its trademark application and the Notice of Opposition.

WHEREFORE, Applicant prays that Application Serial No. 86/002,539 be allowed to proceed to registration, and that the Opposition be dismissed with prejudice.

Dated: July 21, 2014

FOX ROTHSCHILD LLP

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CERTIFICATE OF SERVICE

I, Christopher R. Kinkade, hereby certify that on this 21st day of July, 2014, a true and correct copy of Applicant's Answer to Notice of Opposition was served via email, by consent, upon the following counsel for Opposer:

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