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

Proceeding	91216233
Party	Defendant John Wayne Enterprises, LLC
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Submission	Answer
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Date	06/12/2014
Attachments	Answer to Notice of Opposition.pdf(53214 bytes)

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

DUKE UNIVERSITY,)	Opposition No. 91216233
)	
Opposer,)	Serial No. 85860463
)	
v.)	
)	
JOHN WAYNE ENTERPRISES, LLC,)	
)	
Applicant.)	
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ANSWER TO NOTICE OF OPPOSITION

Applicant John Wayne Enterprises, LLC (“Applicant”), for itself alone, by and through its attorneys, Rutan & Tucker, LLP, answers the Notice of Opposition (the “Opposition”) filed on behalf of Opposer Duke University (“Opposer”) as follows:

1. Applicant lacks sufficient information or belief upon which to admit or deny the allegations of paragraph 1 of the Opposition and, on that basis, denies each and every such allegation.
2. Applicant lacks sufficient information or belief upon which to admit or deny the allegations of paragraph 2 of the Opposition and, on that basis, denies each and every such allegation.
3. Applicant lacks sufficient information or belief upon which to admit or deny the

allegations of paragraph 3 of the Opposition and, on that basis, denies each and every such allegation.

4. Applicant admits that it seeks registration for the mark that is the subject of the Opposition and that the mark speaks for itself. Except as expressly admitted herein, Applicant denies each and every allegation of paragraph 4 of the Opposition.

5. Applicant lacks sufficient information or belief upon which to admit or deny the allegations of paragraph 5 of the Opposition and, on that basis, denies each and every such allegation.

6. Applicant admits that it has previously been engaged with Opposer in various opposition and cancellation proceedings involving the mark Duke, and variants thereof, and that the records in those proceedings speak for themselves. Except as expressly admitted herein, Applicant denies each and every allegation of paragraph 6 of the Opposition.

7. Applicant admits that Opposer is identified as the “owner” on the Trademark Electronic Search System at www.uspto.gov of the Registration Numbers listed in paragraph 7 of the Opposition, and that those registrations speak for themselves. Except as expressly admitted herein, Applicant denies each and every allegation of paragraph 7 of the Opposition.

8. Applicant lacks sufficient information or belief upon which to admit or deny the allegations of paragraph 8 of the Opposition and, on that basis, denies each and every such allegation.

9. Applicant denies the allegations of paragraph 9 of the Opposition.

10. Applicant lacks sufficient information or belief upon which to admit or deny the allegations of paragraph 10 of the Opposition and, on that basis, denies each and every such allegation.

11. Applicant denies the allegations of paragraph 11 of the Opposition.

12. Applicant denies the allegations of paragraph 12 of the Opposition.

13. Applicant denies the allegations of paragraph 13 of the Opposition.

AFFIRMATIVE DEFENSES

For its separate and affirmative defenses, and without conceding that it bears the burden of proof or persuasion as to any defense, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

For a first, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that the Opposition and each purported claim alleged therein fail to state facts sufficient to constitute any claim.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

For a second, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that Opposer is barred from obtaining any relief due to its unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Trademark Misuse)

For a third, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that Opposer's Opposition and each claim for relief stated therein are barred due to Opposer's misuse of its trademarks.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

For a fourth, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that Opposer is not entitled to any relief due to laches.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

For a fifth, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that Opposer is not entitled to any relief due to estoppel.

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SIXTH AFFIRMATIVE DEFENSE

(No Confusion or Dilution)

For a sixth, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that its mark is not likely to cause confusion, mistake, or to deceive, nor is likely to interfere with Opposer's use and exploitation of Opposer's alleged marks, to falsely suggest a connection with Opposer, or diminish, dilute, or tarnish Opposer's alleged rights in said marks.

SEVENTH AFFIRMATIVE DEFENSE

("Duke" Not Famous)

For a seventh, separate affirmative defense to the Opposition, and to each purported claim alleged therein, Applicant alleges that Opposer's marks asserted in the Opposition are not famous.

ADDITIONAL DEFENSES

Applicant alleges that there may be additional affirmative defenses to Opposer's claims which are currently unknown to Applicant. Applicant reserves the right to amend this Answer to allege additional affirmative defenses in the event discovery or other information indicates they are appropriate.

PRAYER

1. WHEREFORE, Applicant prays for the following relief on its Answer to the Opposition;
2. That Opposer take nothing by the Opposition, and that the Opposition be dismissed and that Applicant's mark be upheld; and

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3. Such other and further relief as the Trademark Trial and Appeal Board deems just and proper.

Dated: June 12, 2014

Respectfully submitted,

/s/ Ronald P. Oines

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that the attached **Answer to Notice of Opposition** was filed electronically with the Trademark Trial and Appeal Board on June 12, 2014.

/s/ Laura Fenwick _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document entitled **Answer to Notice of Opposition** was served by first class mail to the following address on June 12, 2014, such being the Opposer's Domestic Representative and Correspondence as listed on the Notice of Opposition.

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/s/ Laura Fenwick _____