

ESTTA Tracking number: **ESTTA658433**

Filing date: **02/27/2015**

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

Proceeding	91218986
Party	Defendant GourmetGiftBaskets.com, Inc.
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Date	02/27/2015
Attachments	gbaskets-answer-to-oppo-2.pdf(21452 bytes)

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

In the matter of Serial No. 86/286,130
Published in the Official Gazette on October 14, 2014

and

In the matter of Serial No. 86/286,153
Published in the Official Gazette on October 14, 2014

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
(Parent)

Opposition No. 91218986

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 the two (2) applications for registration of Applicant's trademarks, namely:

(1) "Kingofpop.com and design", serial number 86/286,130 filed on

May 20, 2014 and published in the official Gazette of October 14, 2014 and (2) "Kingofpop and design", serial number 86/286,153 filed on May 20, 2014 and published in the official Gazette of October 14, 2014 (the "Marks"), 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 with 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 with 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. Denied

6. 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.

7. Admitted

8. Admitted

9. Admitted

10. Admitted

11. 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...".

12. Denied

13. Denied

14. Admitted

15. Admitted

16. Denied

17. Denied

18. Denied

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

AFFERMATIVE DEFENSES

First Affirmative Defense

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

Second Affirmative Defense

21. Opposer lacks standing to bring this Opposition.

Third Affirmative Defense

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

23. The King of Pop nickname is typically applied to a popular artist or entertainer of the times.

24. The nickname "King of Pop" is not associated uniquely and unmistakably with Michael J. Jackson.

25. The nickname "King of Pop" is a temporary title used by the public and/or the media to refer to multiple, unrelated parties (artists/entertainers), therefore any rights of Opposer in and to this nickname are weak, transient and fleeting, 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 uniquely and unmistakably to Opposer.

26. Applicant's applied for Marks KINGOFPOP.COM and KINGOFPOP (both with the same design elements) do not point

uniquely and unmistakably to the deceased entertainer Michael Jackson.

27. Applicant's use of its trademarks "King of Pop and design" and "KINGOFPOP.COM and design) therefore do not falsely suggest a connection with the deceased entertainer Michael Jackson.

Fourth Affirmative Defense

28. Applicant's applied for trademarks includes not only the URL "KINGOFPOP.COM" but also a very stylized and fanciful design elements including particular colors; popcorn kernels and a "crown" over the letter "O" in "POP" as well as the mark "KINGOFPOP with the same very stylized and fanciful design elements.

29. Applicant's applied for trademarks are being used on and intending to be used on and in connection with and only with "flavor-coated popped popcorn; popped popcorn".

30. There is no likelihood that anyone will associate Applicant's applied for mark relative to "flavor-coated popped popcorn; popped popcorn" with the deceased entertainer Michael J. Jackson and therefore, Applicant's "KINGOFPOP and design" and "KINGOFPOP.COM and design" trademarks, when considered in connection with the goods for which registration is sought, namely, "flavor-coated popped popcorn; popped popcorn", do not falsely suggest a connection with the deceased entertainer Michael Jackson.

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 February 27, 2015, 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 February 27, 2015, at Manchester, NH.

/DJB/

Daniel J. Bourque