

ESTTA Tracking number: **ESTTA642196**

Filing date: **12/02/2014**

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

Proceeding	91218999
Party	Defendant Lifted Research Group, Inc.
Correspondence Address	LOWELL ANDERSON STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656 UNITED STATES
Submission	Answer
Filer's Name	Lowell Anderson
Filer's e-mail	opposition@stetinalaw.com, landerson@stetinalaw.com
Signature	/Lowell Anderson/
Date	12/02/2014
Attachments	[12 02 14] Answer.pdf(103412 bytes)

Case: LIFTE-147M
Trademark Opposition

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN RE SERIAL NO. 86/039,394

HIPPY TREE, LLC)	Opposition No.: 91218999
)	
Opposer,)	
)	
vs.)	
)	
LIFTED RESEARCH GROUP, INC.)	
)	
Applicant.)	
_____)	

ANSWER

Applicant, Lifted Research, Group, Inc. (hereinafter “Applicant”), hereby answers each and every allegation recited in the above-captioned Notice of Opposition as follows:

To the extent that the introductory allegations in the single paragraph on page 1 are deemed part of the alleged pleadings for which a response is due, they are denied.

1. Applicant admits that Opposer is the named owner of Registration No. 4,338,395 for “hippy tree,” Registration No. 4,338,348 for “hippytree,” and Registration No. 4,066,181 for “hpytre.” Applicant lacks sufficient information upon which to form a belief as to the truth or falsity of the remaining allegations of paragraph 1 and on that basis denies those allegations.

2. Applicant lacks sufficient information upon which to form a belief as to the truth or falsity of the allegations of paragraph 2 and on that basis denies those allegations.

3. Admitted.

4. Applicant lacks sufficient information upon which to form a belief as to the truth or falsity of the allegations of paragraph 4 of the Opposition and on that basis denies those allegations.

5. Admitted.

6. Applicant admits that its TREES mark is the plural of TREE and that four of Opposer's Registrations include the singular term "tree" as part of the registered mark, and denies the remaining allegations of paragraph 6.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim on which relief may be granted.

2. Opposer is barred, in whole or in part, from relief by the Doctrine of Unclean Hands.

3. Opposer has no rights in its mark that predate those of Applicant.

4. There is no likelihood of confusion.

5. The large number of word marks using formatives of "tree" or "trees" on class 25 goods and the large number of logos using images of trees on class 25 goods,

including Applicant's registered marks 3,703,617, 3,703,616 and 2,958,307, show that Opposer's alleged marks are not sufficiently distinctive to support a finding that confusion is likely to occur.

6. The large number of word marks using formatives of "tree" or "trees" and the large number of logos using images of trees on Class 25 goods, including Applicant's registered marks 3,703,617, 3,703,616 and 2,958,307 show that consumers distinguish between Applicant's mark in connection with Applicant's goods and Opposer's asserted marks and goods so as to avoid any likelihood of confusion.

7. Opposer has no rights to the term "tree" or "trees" by themselves for any goods in Class 25 as would create a likelihood of confusion with Applicant's mark and goods for which registration is sought.

8. Applicant hereby gives notice that it intends to rely on any additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such additional affirmative defenses.

Please charge any fees which may be due in relation to this matter to Deposit Account No. 19-4330.

Respectfully submitted,

Dated: December 2, 2014

STETINA BRUNDA GARRED & BRUCKER

By: Lowell Anderson
Lowell Anderson, Reg. No. 30,990
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246

Counsel for Applicant
Lifted Research Group, Inc.

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **December 2, 2014**, the attached **ANSWER** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Jesse Saivar
Greenberg Glusker Fields
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067

Executed on **December 2, 2014** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

/s/Tara Hamilton
Tara Hamilton