

ESTTA Tracking number: **ESTTA672526**

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

Proceeding	91219662
Party	Defendant Tom Miles
Correspondence Address	WENDY PETERSON NOT JUST PATENTS LLC PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@NJPLS.com
Submission	Answer
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Date	05/15/2015
Attachments	Answer.pdf(35104 bytes)

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

Opposition Proceeding 91219662

In the matter of Trademark Registration No. 86138010

For the mark: REAL (design mark) 

Publication Date: Nov. 11, 2014

IP Associates, LLC v. Tom Miles

ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION

1. Applicant does not have sufficient information to admit or deny the allegation.
2. Applicant does not have sufficient information to admit or deny the allegation.
3. Applicant does not have sufficient information to admit or deny the allegation. No registrations were pleaded into the record.
4. Applicant does not have sufficient information to admit or deny the allegation. No registrations were pleaded into the record.
5. Applicant does not have sufficient information to admit or deny the allegation.
6. Denied that Applicant's mark is a confusingly similar mark, admitted that the application took place.
7. Denied.
8. Denied.

9. Denied.

AFFIRMATIVE DEFENSES

1. Opposer did not plead any claims of inherent distinctiveness required to claim common law rights in its Amended Notice of Opposition. *Towers v. Advent Software Inc.*, 913 F.2d 942, 16 USPQ2d 1039, 1041 (Fed. Cir. 1990), citing, *Otto Roth & Co. v. Universal Food Corp.*, 640 F.2d 1317, 209 USPQ 40, 43 (CCPA 1981) and as such Opposer's claims are limited to registered goods (if Opposer properly places them in the record).
2. Because Applicant may not attack the validity of Opposer's pleaded registrations absent a counterclaim to cancel those registrations, Applicant asserts that Opposer's marks are weak and entitled to only a very narrow scope of protection. Trademark Rule 2.106(b)(ii), 37 CFR § 2.16(b)(ii). The level of descriptiveness of a cited mark may influence the conclusion that confusion is likely or unlikely, see *Sure-Fit Products Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 160, 45 CCPA 856, 859, 117 USPQ 295, 297 (1958).

Submitted By: /Wendy Peterson/

Date: May 15, 2015

Wendy Peterson, Attorney for Tom Miles, Applicant
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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2015, the foregoing was served upon Opposer by first mail:

Jennifer L. Whitelaw
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By: /Wendy Peterson/

Date: May 15, 2015

Wendy Peterson, Attorney for Tom Miles, Applicant