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

Proceeding	91228245
Party	Defendant Lubin, Tobias
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Submission	Answer
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Date	07/11/2016
Attachments	Beyond Stitch Answer Filing Copy.pdf(130882 bytes)

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

In the Matter of
Trademark Serial No. 86831780
For the Mark BEYOND THE STITCH
Filed on: May 23, 2016
Published for Opposition on: April 26, 2016

5.11, Inc.,

Opposer,

v.

Tobias Lubin,

Applicant.

Opposition No. 91228245

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

The following is the Answer of Tobias Lubin (hereinafter “Applicant”) to the Notice of Opposition of Registration filed by 5.11, Inc. (hereinafter “Opposer”) on May 23, 2016 and assigned Opposition No. 91228245 (hereinafter “Notice of Opposition”). Applicant hereby Answers solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to paragraph 3 of the Notice of Opposition.
4. Applicant is without knowledge or information sufficient to form a belief as to paragraph 4, and therefore denies the allegations contained within paragraph 4.
5. Applicant is without knowledge or information sufficient to form a belief as to paragraph 5, and therefore denies the allegations contained within paragraph 5.
6. Applicant is without knowledge or information sufficient to form a belief as to paragraph 6, and therefore denies the allegations contained within paragraph 6.
7. Applicant admits the allegations contained within paragraph 7.
8. Applicant admits that the applicant referenced was filed as an intent to use application and the remainder of the allegations contained within paragraph 8.
9. Applicant admits the allegations contained within paragraph 9.
10. Paragraph 10 contains legal conclusions and therefore no answer is required for those conclusions. Applicant denies the remaining allegations contained within paragraph 10 and demands strict proof thereof.
11. Paragraph 11 contains legal conclusions and therefore no answer is required for those conclusions. Applicant denies the remaining allegations contained within paragraph 11.
12. Paragraph 12 contains legal conclusions and therefore no answer is required for those conclusions. Applicant denies the remaining allegations contained within paragraph 12.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice and costs be assessed against the Opposer.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Applicant states as follows:

1. Opposer fails to state a claim upon which relief can be granted because Marks are descriptive or, at best laudatory and lack secondary meaning.
2. Opposer should be denied relief because there is no likelihood of confusion between BEYOND THE STITCH and BEYOND. While both Applicant and Opposer sell clothing, Applicant does not sell outdoor clothing, does not market to that segment of the market, does not utilize retailers or distributors involved in that market segment, and does not produce clothing that could be used or confused with Opposer's goods.
3. Further, there is no likelihood of confusion because Opposer's Mark does not share the holistic look, feel, sound or meaning of the Marks. Applicant's Mark is "BEYOND THE STITCH" and Opposer's Mark is "BEYOND." While they share a starting term, that is not the salient or dominant portion of Applicant's Mark and consumers are unlikely to fixate on one non-dominant portion because Applicant's Mark lacks any meaning without the entire phrase being internalized and processed by consumers.
4. Opposer has not and will not be damaged by the continued registration of the Mark and therefore lacks standing oppose the application.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

DATED: July 11, 2016

Respectfully Submitted,

/Rishi Nair/

One of Applicant's Attorneys,

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CERTIFICATE OF SERVICE

I, Rishi Nair, an attorney, hereby certify that a true and correct copy of the foregoing Applicant's Answer to Notice of Opposition was served upon Opposer's counsel of record by first-class U.S. mail, postage prepaid, on this 11th Day of July, 2016, at the following address:

Susan B. Meyer
Gordon & Rees LLP
101 W. Broadway, Ste. 2000
San Diego, CA 92101
UNITED STATES

Dated: July 11, 2016

/Rishi Nair/

Rishi Nair