

ESTTA Tracking number: **ESTTA787537**

Filing date: **12/06/2016**

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

Proceeding	91230299
Party	Defendant Zachry Construction Corporation
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Date	12/06/2016
Attachments	Answer.pdf(876694 bytes )

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

In the Matter of:  
Application Serial No.: 86-700,272  
Mark: BUILDING THE EXTRAORDINARY  
Published: June 7, 2016

EVENTSCAPE INC.,	)	
	)	
Opposer	)	
	)	Opposition No. 91230299
v.	)	
	)	
ZACHRY CONSTRUCTION	)	
CORPORATION,	)	
	)	
Applicant	)	

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Zachry Construction Corporation (“Applicant”), owner of Federal Trademark Application Serial No. 86/700,272 for the mark BUILDING THE EXTRAORDINARY, by its counsel, states the following as its Answer to the Notice of Opposition by Opposer Eventscape, Inc. (“Opposer”):

Applicant denies that registration of this mark would give rise to a likelihood of confusion with Opposer’s asserted registered and common law trademark rights. All allegations in the Opposition not specifically admitted herein are denied. Applicant responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies same.

4. Applicant admits that Opposer is the owner of record of U.S. Registration No. 3,954,689 and Canadian Trademark Registration No. 814,639, covering the mark and services identified in those registrations.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, accordingly, denies same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and, accordingly, denies same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and therefore denies same.

8. Applicant denies the allegations in paragraph 8.

9. Applicant admits the allegations in paragraph 9.

10. Applicant denies the allegations in paragraph 10.

11. Applicant denies the allegations in paragraph 11.

12. Applicant denies the allegations in paragraph 12.

13. Applicant denies the allegations in paragraph 13.

14. Applicant denies the allegations in paragraph 14.

15. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and therefore denies same.

16. Applicant denies the allegations in paragraph 17.

17. Applicant admits the allegations in paragraph 18.

18. Applicant admits the allegations in paragraph 19.

### AFFIRMATIVE DEFENSES

1. Opposer has no basis either in law or fact to oppose registration of Applicant's mark.

2. There is no likelihood of confusion, mistake, or deception to purchasers as to the source of Opposer's services.

3. Applicant's services and Opposer's services are noncompeting and ordinary consumers would not conclude that the services share a common source.

4. Purchasers of Applicant's services are sophisticated.

5. Purchasers of Opposer's services are sophisticated.

6. Applicant's mark and Opposer's marks have very different commercial impressions.

7. Applicant's mark does not falsely suggest a connection with Opposer's applicable equitable principles.

8. Opposer has failed to adequately maintain, police, or enforce trademark or proprietary rights it may have in its alleged trademarks.

9. Applicant denies that Opposer has been, or will be, injured in any manner by registration of Applicant's mark, denies that Opposer is entitled to any of the relief requested in the Notice of Opposition, and calls for strict proof of all of the allegations against Applicant.

10. Applicant may rely on all other valid defenses that may be developed through discovery or the evidence.


Applicant hereby appoints Courtenay B. Allen, Pamela Huff and Kristi F. Dent, members of the Texas State Bar, to act as attorneys in the matter of the Opposition identified above, to prosecute said Opposition, to transact all business in the Patent and Trademark Office and in the United States courts connected with the Opposition, to sign its name to all papers which are



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Answer to Notice of Opposition was served on the following attorney of record for Opposer by depositing same in the United States mail, first class, postage pre-paid, December 6, 2016 to:

Charles J. Meyer  
Woodard, Emhardt, Moriarty, McNett & Henry LLP  
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Pamela B. Huff