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

Proceeding	91234724
Party	Defendant Leon Etienne DBA Leon Etienne Magic Productions
Correspondence Address	LEON ETIENNE 1221 ASH ST UTICA, NY 13502 UNITED STATES Email: grhathaway@sbcglobal.net
Submission	Answer
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Date	07/03/2017
Attachments	Answer to Notice of Opposition.PDF(237478 bytes)

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

MAGIC ROCKS, INC.,

Opposer,

v.

LEON ETIENNE, DBA LEON ETIENNE MAGIC
PRODUCTIONS,

Applicant.

Application No. 87/235,454

Opposition No. 91234724

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Leon Etienne (“Applicant”), by and through its attorneys, Leason Ellis LLP, hereby answers the Notice of Opposition as follows:

In response to the first unnumbered paragraph, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly, denies the same.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and, accordingly, denies the same. Exhibit A speaks for itself.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and, accordingly, denies the same. Exhibit B speaks for itself.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and, accordingly, denies the same. Exhibit C speaks for itself.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and, accordingly, denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, accordingly, denies the 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 the same.
7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and, accordingly, denies the same.
8. Applicant denies the allegations of paragraph 8.
9. Applicant denies the allegations of paragraph 9.
10. Applicant admits the allegations in paragraph 10, except Applicant notes that it filed Application Serial No. 87/235454 on November 14, 2016 and not on November 16, 2016.
11. Applicant admits that he is a magician and the star of the SandCastle Theater in Saipan. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and, accordingly denies the same.
12. Paragraph 12 sets forth a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 12.
13. Paragraph 13 sets forth a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 13.

14. Applicant admits the allegations in paragraph 14.
15. Applicant denies the allegations in paragraph 15.
16. Paragraph 16 sets forth a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 16. Exhibit D speaks for itself.
17. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 relating to Opposer's entertainment services, and, accordingly, denies the same. Applicant denies the remaining allegations set forth in paragraph 17. Applicant specifically denies that a human infant was sawn in half. Exhibit E speaks for itself.
18. Paragraph 18 sets forth a legal conclusion to which no response is required. To the extent a response is required, Applicant denies the allegations in paragraph 18. Exhibit D speaks for itself.
19. Applicant denies the allegations in paragraph 19.
20. Applicant denies the allegations in paragraph 20.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. Opposer has no standing to bring this Opposition as Opposer cannot and will not be damaged by the registration of the subject mark.
3. Applicant has superior trademark rights in the MAGIC ROCKS mark.
4. Opposer has not used the MAGIC ROCKS mark in interstate commerce.
5. Opposer's alleged MAGIC ROCKS trademark fails to function as a trademark, as

a result of the nature of Opposer's use, including but not limited to Opposer's acquiescence in the naked licensing of its alleged trademark, as well as Opposer's non-trademark use of the term.

6. Opposer has abandoned any trademark rights it may have had in the term MAGIC ROCKS, through acts including but not limited to its acquiescence in the naked licensing of its alleged trademark.

7. Opposer's claims are barred by the doctrine of unclean hands.

8. Opposer's claims are barred by the doctrines of waiver and/or estoppel.

9. Opposer's claims are barred by the doctrine of acquiescence.

10. Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defense.

WHEREFORE, Applicant respectfully requests that Opposition No. 91234724 be dismissed with prejudice.

Dated: July 3, 2017
White Plains, New York

Respectfully submitted,



Martin B. Schwimmer
Lori L. Cooper

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on Opposer by forwarding said copy on July 3, 2017, via email to Angela V. Langlotz, 848 N. Rainbow Blvd, #3721, Las Vegas, NV 89107 at angela@alanglotz.com.

/s/ Lori Cooper.