

ESTTA Tracking number: **ESTTA842927**

Filing date: **08/30/2017**

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

Proceeding	91235700
Party	Defendant MATTEL, INC.
Correspondence Address	MATT SOLMON MATTEL, INC. 333 CONTINENTAL BOULEVARD M1-1518 EL SEGUNDO, CA 90245 Email: USPTO@mattel.com
Submission	Answer
Filer's Name	Bobby Ghajar
Filer's email	bghajar@cooley.com, mpeterson@cooley.com, trademarks@cooley.com, jalvarez@cooley.com, uspto@mattel.com
Signature	/Bobby Ghajar/
Date	08/30/2017
Attachments	Applicant Mattel Inc. Answer to Notice of Opposition.pdf(122373 bytes)

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

Robert Anderson and Faye Granieri,	§	
	§	Opposition No. 91235700
Opposer,	§	
	§	Application Ser. No.: 87/124,063 and 87/124,065
v.	§	
	§	Subject Mark: ENCHANTIMALS
Mattel, Inc.,	§	
	§	Published: May 23, 2017 and June 13, 2017
Applicant.	§	

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

Applicant Mattel, Inc. (“Applicant” or “Mattel”) hereby responds to the above-captioned Notice of Opposition (“Opposition”) filed by Robert Anderson and Faye Granieri (“Opposers”) as follows:

Opposers’ introductory paragraphs contain legal conclusions to which no response is required. To the extent a response is necessary, Mattel admits that it filed the subject applications and that the content of the trademark application files speak for themselves, but otherwise denies the remaining allegations in the introductory paragraphs.

1. Admit that Mattel’s principal place of business is at 333 Continental Boulevard, El Segundo, California, 90245, and is incorporated in Delaware.
2. Admit.
3. Admit.
4. Admit.
5. Admit.

6. Admit that Mr. Anderson took an extension of time to oppose the referenced application, but otherwise denied.
7. Admit that Mr. Anderson took an extension of time to oppose the referenced application, but otherwise denied.
8. Applicant is without sufficient information to admit or deny the allegations in Paragraph 8 of the Opposition and on that basis denies them.
9. Applicant is without sufficient information to admit or deny the allegations in Paragraph 9 of the Opposition and on that basis denies them.
10. Applicant is without sufficient information to admit or deny the allegations in Paragraph 10 of the Opposition and on that basis denies them.
11. Applicant is without sufficient information to admit or deny the allegations in Paragraph 11 of the Opposition and on that basis denies them.
12. Applicant is without sufficient information to admit or deny the allegations in Paragraph 12 of the Opposition and on that basis denies them.
13. Applicant is without sufficient information to admit or deny the allegations in Paragraph 13 of the Opposition and on that basis denies them.
14. Applicant is without sufficient information to admit or deny the allegations in Paragraph 14 of the Opposition and on that basis denies them.
15. Applicant is without sufficient information to admit or deny the allegations in Paragraph 15 of the Opposition and on that basis denies them.
16. Applicant is without sufficient information to admit or deny the allegations in Paragraph 16 of the Opposition and on that basis denies them.

17. Applicant is without sufficient information to admit or deny the allegations in Paragraph 17 of the Opposition and on that basis denies them.
18. Applicant is without sufficient information to admit or deny the allegations in Paragraph 18 of the Opposition and on that basis denies them.
19. Applicant is without sufficient information to admit or deny the allegations in Paragraph 19 of the Opposition and on that basis denies them.
20. Applicant is without sufficient information to admit or deny the allegations in Paragraph 20 of the Opposition and on that basis denies them.
21. Applicant is without sufficient information to admit or deny the allegations in Paragraph 21 of the Opposition and on that basis denies them.
22. Applicant is without sufficient information to admit or deny the allegations in Paragraph 22 of the Opposition and on that basis denies them.
23. Applicant admits that when the domain name enchantimals.com was registered in April 2016, it was not owned by anybody, including Opposers. Applicant admits that it currently owns the enchantimals.com domain name. Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 23 of the Opposition and on that basis denies them.
24. Applicant denies that any of its actions led to any “consequence” for Opposers or “required” them to register the domain name enchantimals.net. Applicant admits that it currently owns the enchantimals.com domain name. Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 24 of the Opposition and on that basis denies them.

25. Applicant is without sufficient information to admit or deny the allegations in Paragraph 25 of the Opposition and on that basis denies them.
26. Applicant is without sufficient information to admit or deny the allegations in Paragraph 26 of the Opposition and on that basis denies them.
27. Whether a term is “inherently distinctive” or “fanciful” calls for a legal conclusion and such that requires no response. To the extent that it requires a response, and as to the remaining allegation, Applicant is without sufficient information to admit or deny the allegations in Paragraph 27 of the Opposition and on that basis denies them.
28. Applicant denies that Opposers have developed “substantial good will in and developed significant common law rights to the ENCHANTIMALS mark” throughout the United States. Applicant is without sufficient information to admit or deny the remaining allegations in Paragraph 28 of the Opposition and on that basis denies them.
29. Applicant denies the allegations in Paragraph 29 of the Opposition.
30. Applicant admits it seeks registration of the mark ENCHANTIMALS. Applicant denies that Opposers own rights to that mark and otherwise denies the allegations in Paragraph 30 of the Opposition.
31. Applicant denies the allegations in Paragraph 31 of the Opposition.
32. The allegations in this Paragraph are vague and confusing, but subject to Applicant’s understanding of the allegations, Applicant denies the allegations in Paragraph 32 of the Opposition.
33. Applicant denies that its actions are likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship or affiliation of Applicant’s goods or services, and otherwise denies the allegations in Paragraph 33 of the Opposition.

34. Applicant denies the allegations in Paragraph 34 of the Opposition.
35. Applicant denies the allegation in Paragraph 35 of the Opposition.

AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure and Trademark Board Manual of Procedure § 311.02, Applicant further pleads the following separate and additional defenses. Applicant reserves the right to assert such additional affirmative defenses as discovery progresses.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon Which Relief May be Granted)

The Opposition fails to state a claim upon which relief may be granted and fails to allege with specificity the bases of Opposers' claims that Applicant's applied-for mark is likely to cause confusion with Opposers' alleged mark.

SECOND AFFIRMATIVE DEFENSE

(Invalidity and Lack of Prior Common Law Rights)

Opposers do not own any trademark registration for the mark ENCHANTIMALS. On information and belief, Opposers did not use the ENCHANTIMALS mark in interstate commerce as a trademark on any goods or services at the time Applicant applied to register the ENCHANTIMALS mark. On information and belief, Opposers cannot establish that they owned valid trademark rights in the ENCHANTIMALS mark in interstate commerce at the time Applicant filed the subject applications.

THIRD AFFIRMATIVE DEFENSE

(Abandonment)

On information and belief, to the extent Opposers ever owned rights in the ENCHANTIMALS mark, they abandoned those rights prior to the time Applicant applied to register the ENCHANTIMALS mark.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Opposers' attempt to establish and/or expand its use of the mark ENCHANTIMALS, as well as other actions that they took subsequent to Applicant's adoption, use, and application to register the ENCHANTIMALS mark, constitutes unclean hands and bars Opposers from obtaining the relief sought in the Opposition.

Whereas, Applicant prays that the Notice of Opposition be denied and dismissed in its entirety, and that Applicant's applications for the ENCHANTIMALS mark be allowed to register for all of the goods and services identified therein.

Respectfully submitted,
Mattel, Inc.

Date: August 30, 2017

By: /Bobby Ghajar/ _____
Bobby Ghajar
Marcus Peterson
COOLEY, LLP
1333 2ND Street, Suite 400
Santa Monica, CA 90301
(310) 883-6400

CERTIFICATE OF ELECTRONIC TRANSMISSION

August 30, 2017

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office Trademark Trial and Appeal Board using the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated above.

/Bobby Ghajar/

Bobby Ghajar

CERTIFICATE OF SERVICE

I, Bobby Ghajar, hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES has been served on Opposers' counsel by forwarding said copy on August 30, 2017 via email, to:

Robert J. Itri, Esq.
Milligan Lawless, P.C.
5050 N. 40th Street, Suite 200
Phoenix, Arizona 85018
Telephone: (602) 792-3532
Email: Bob.Itri@MilliganLawless.com

/Bobby Ghajar/
Bobby Ghajar