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

Proceeding	91236715
Party	Defendant Theatricality LLC
Correspondence Address	WILLMORE F HOLBROW III BUCHALTER 1000 WILSHIRE BLVD, SUITE 1500 LOS ANGELES, CA 90017 UNITED STATES wholbrow@buchalter.com, jgass@buchalter.com, ipdocket@buchalter.com 213-891-0700
Submission	Answer
Filer's Name	Willmore F. Holbrow III
Filer's email	wholbrow@buchalter.com, jgass@buchalter.com, ipdocket@buchalter.com
Signature	/Willmore F. Holbrow III/
Date	06/01/2020
Attachments	THEATRICALITY - Answer to 2nd Amended Notice of Opposition.pdf(310822 bytes)

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

Application Serial No.: 87/371,308
Mark: WAR BOT
International Classes: 16 & 28
Applicant: Theatricality LLC
Published in *Official Gazette*: July 18, 2017

ROBOT WARS, LLC,

Opposer,

vs.

THEATRICALITY LLC,

Applicant.

Opposition No. 91236715

ANSWER TO SECOND AMENDED NOTICE OF OPPOSITION

Applicant THEATRICALITY LLC responds as follows to Opposer Robot Wars, LLC Second Amended Notice of Opposition.

1. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and denies them.
2. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and denies them.
3. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and to the extent a response is required, Applicant denies them.
4. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and Applicant denies them.
5. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and Applicant denies them.

6. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and Applicant denies them.
7. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and Applicant denies them.
8. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and Applicant denies them.
9. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and Applicant denies them.
10. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and Applicant denies them.
11. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and Applicant denies them.
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 admits only that Opposer filed a Section 15 Declaration of Incontestability and that it is of record at the USPTO.
16. Applicant admits.
17. Applicant admits.
18. Applicant admits.
19. Applicant admits.
20. Applicant denies the allegations in Paragraph 20.

CLAIM I

PRIORITY AND LIKELIHOOD OF CONFUSION (Section 2(d))

21. Applicant repeats and realleges each of the responses to the allegations in the preceding paragraphs, as if set forth fully herein.

22. Applicant admits that it has priority of use with respect to the WAR BOT mark and denies any remaining allegations in Paragraph 22.
23. Applicant denies the allegations in Paragraph 23.
24. Applicant denies the allegations in Paragraph 24.
25. Applicant denies the allegations in Paragraph 25.
26. Applicant denies the allegations in Paragraph 26.
27. Applicant denies the allegations in Paragraph 27.
28. Applicant denies the allegations in Paragraph 28.
29. Applicant denies the allegations in Paragraph 29.
30. Applicant denies the allegations in Paragraph 30.

CLAIM II

FALSE SUGGESTION OF CONNECTION (Section 2(a))

31. Applicant repeats and realleges each of the responses to the allegations in the preceding paragraphs, as if set forth fully herein.
32. Applicant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32, and Applicant denies them.
33. Applicant denies the allegations in Paragraph 33.
34. Applicant denies the allegations in Paragraph 34.
35. Applicant denies the allegations in Paragraph 35.
36. Applicant denies the allegations in Paragraph 36.
37. Applicant denies the allegations in Paragraph 37.
38. Applicant denies the allegations in Paragraph 38.

CLAIM III

TRADEMARK DILUTION (Section 43(c))

39. Applicant repeats and realleges each of the responses to the allegations in the preceding paragraphs, as if set forth fully herein.
40. Applicant denies the allegations in Paragraph 40.

41. Applicant denies the allegations in Paragraph 41.
42. Applicant denies the allegations in Paragraph 42.
43. Applicant denies the allegations in Paragraph 43.
44. Applicant denies the allegations in Paragraph 44.
45. Applicant denies the allegations in Paragraph 45.
46. Applicant denies the allegations in Paragraph 46.
47. Applicant denies the allegations in Paragraph 47.
48. Applicant denies the allegations in Paragraph 48.
49. Applicant denies the allegations in Paragraph 49.
50. Applicant denies the allegations in Paragraph 50.

CLAIM IV

INVALIDITY OF APPLICANT'S APPLICATION (Sections 1, 45)

51. Applicant repeats and realleges each of the responses to the allegations in the preceding paragraphs, as if set forth fully herein.
52. Applicant admits the allegations in Paragraph 52.
53. Applicant denies the allegations in Paragraph 53.
54. Applicant denies the allegations in Paragraph 54.

AFFIRMATIVE AND EQUITABLE DEFENSES

A. Priority

Applicant has priority to the mark at issue based on the priority date of its trademark application, and prior and long-time continuing use of the mark for the goods listed in its application.

B. There is No Likelihood of Confusion

The marks are different in appearance, sound and meaning, are for different goods and services, would use different channels of trade, and consumers have not and will not be confused as to source, sponsorship or affiliation.

C. Concurrent Use

If Opposer's Mark was actually used continuously in U.S. commerce, which Applicant denies, then Applicant's mark and Opposer's mark were in concurrent use for the past many years. There were no incidents of actual confusion during this period. Thus, it is obvious that the marks are not confusingly similar, there is no likelihood of confusing similarity, and that consumers actually know the difference between the marks and goods and do not consider them as emanating from the same source.

D. Prior Registration and Concurrent Use Prove that Opposer Has Not Suffered Damage

If Opposer's Mark was actually used continuously in U.S. commerce, which Applicant denies, then Applicant's mark and Opposer's mark were in concurrent use for many years. There were no incidents of actual confusion during this period. Thus, it is obvious that the marks are not confusingly similar and that Opposer never suffered damage and has not been damaged.

E. Opposer Was Never Damaged by Applicant's Prior Identical Mark and Registration

Opposer knew of Applicant's prior registration and mark and never sought to enforce any rights it thought it might have had. This demonstrates that Opposer never was and never will be damaged by Applicant's mark or registration of that mark.

F. Applicant's Use of the Mark for Its Goods has been Continuous since 2008 and Applicant is the Senior User of the Mark for Its Goods

Applicant has continuously used its mark for the goods listed in its prior registration and in its application since at least as early as 2008. This use of the mark for toys is prior to Opposer's use of a different mark.

G. Opposer's Mark is not Well-Known or Famous and There Can be No Dilution Claim

Because Opposer's Mark is neither well-known nor famous, there is no dilution and thus no blurring or tarnishment of its mark.

Respectfully submitted,

BUCHALTER
A Professional Corporation

DATED: June 1, 2020

By: 

WILLMORE F. HOLBROW III
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-1730
Telephone: 213:891:0700
Fax: 213:896:0400

Attorney for Applicant Theatricality LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served on Opposer via email, addressed to Opposer's counsel of record, as follows:

ROBERT B GOLDEN
LACKENBACH SIEGEL LLP
ONE CHASE ROAD PENTHOUSE FLOOR LACKENBACH SIEGEL BUILDING
SCARSDALE, NY 10583
HAronson@LSLLP.com, RGolden@LSLLP.com, TMEFS@LSLLP.com,
MDeI-Colle@LSLLP.com, JRollings@LSLLP.com

Dated: June 1, 2020
Los Angeles, California

/s/ Janet E. Gass
Janet E. Gass