

ESTTA Tracking number: **ESTTA879281**

Filing date: **02/23/2018**

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

Proceeding	91237844
Party	Defendant GUO, Xiuling
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Date	02/23/2018
Attachments	Answer.pdf(115921 bytes)

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

In the matter of Trademark Application Serial Number 87370054
Filed: March 14, 2017
For the Mark: "SANDRIVER & Design"
Published in the *Official Gazette* on July 18, 2017

SAND CPH A/S)	
)	
Opposer,)	
)	
v.)	Opposition No. 91237844
)	
GUO, XIULING,)	
)	
Applicant.)	

ANSWERS AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Box TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

Applicant, GUO, XIULING, by and through its undersigned counsel hereby answers the Notice of Opposition by addressing each allegation.

ANSWERS

Opposer SAND CPH A/S, ("Opposer"), a public limited liability company organized under the laws of Denmark, with an address of Agerskallet 2, Randers 8900, Denmark, believes that it will be damaged by registration on the Principal Register of the term "SANDRIVER & Design", as shown in U.S. Trademark Application Serial No. 87370054, for "clothing apparel, namely, scarves, mufflers, dresses, skirts, sweaters, coats, ponchos, jumpers, gloves, caps, blouses," in

International Class 25, filed in the name of Xiuling Guo ("Applicant"), which published for opposition on July 18, 2017.

RESPONSE:

Applicant has insufficient knowledge of the existence of Opposer and therefore denies this statement. Applicant denies that Opposer will be damaged by registration of the term "SANDRIVER & Design," as shown in U.S. Trademark Application Serial No. 87370054, for "clothing apparel, namely, scarves, mufflers, dresses, skirts, sweaters, coats, ponchos, jumpers, gloves, caps, blouses," in International Class 25, filed in the name of Xiuling Guo.

1. Opposer's filing of this Notice of Opposition is timely pursuant to 37 C.F.R. § 2.101. U.S. Trademark Application Serial No. 87370054 published for opposition on July 18, 2017. On August 17, 2017, Opposer filed a First 30 Day Request for Extension of Time to Oppose, which extended the deadline to September 16, 2017. On September 15, 2017, Opposer filed a 60 Day Request for an Extension of Time to Oppose for Good Cause, which extended the deadline to oppose to November 15, 2017. Therefore, the present deadline to file a Notice of Opposition is November 15, 2017, and this Notice is being filed by the November 15, 2017 deadline.

RESPONSE:

Applicant admits that the USPTO records reflect the alleged averments of paragraph 1.

2. Opposer is the owner of U.S. Trademark Registration No. 3046413 for "SAND" for "footwear and headwear; men's, women's clothing, namely, beachwear and coverups; clothing belts; blazers; blouses; coats; culottes; peddle-pushers; dresses; gowns; dressing and night gowns; gloves; jackets; jeans; jerseys; jumpers; jumpsuits; leggings; mittens; overalls; overcoats; pants; pantsuits; pullovers; robes; scarves; shawls; suits; skirts; shorts; slacks; sleepwear; trousers; smocks; tuxedos; stockings; suit coats; suspenders; sweat suits, pants, shorts and shirts; sweaters; vests; shirts; t-shirts; tank tops; ties; tights; topcoats; tops; underclothes; undergarments; underwear; camisoles; undershirts, chemise; underpants; slippers; socks; neckties; neckerchiefs; bandanas; mufflers," in Class 25; and "retail store services, featuring footwear and headwear; men's, women's clothing, namely, beachwear and cover-ups; clothing belts; blazers; blouses; capes; coats; culottes; peddle-pushers; dresses; gowns; dressing and night gowns; gloves; jackets; jeans; jerseys; jumpers; jumpsuits; leggings; mittens; overalls; overcoats; pants; pantsuits; pullovers; robes; scarves; shawls; suits; skirts; shorts; slacks; sleepwear; trousers; smocks; tuxedos; stockings; suit coats; suspenders; sweat suits, pants, shorts and shirts; sweaters; vests;

shirts; t-shirts; tank tops; ties; tights; topcoats; tops; underclothes; undergarments; underwear; camisoles; undershirts, chemise; underpants; slippers; socks; neckties; neckerchiefs; bandanas; mufflers," in Class 35. This application was filed on July 16, 2004, registered January 17, 2006, and required Sec. 71 Declarations of Use were filed and accepted in 2012 and 2016. (Registration Certificate and TSDR status report attached at Exhibit 1.)

RESPONSE:

Applicant admits that the USPTO records reflect the alleged averments of paragraph 2.

3. Applicant filed U.S. Trademark Application Serial No. 87370054 for "SANDRIVER & Design" in the United States Patent and Trademark Office ("USPTO") on March 14, 2017 for use in connection with "clothing apparel, namely, scarves, mufflers, dresses, skirts, sweaters, coats, ponchos, jumpers, gloves, caps, blouses," in International Class 25.

RESPONSE:

Applicant admits that Applicant filed U.S. Trademark Application Serial No. 87370054 in the United States Patent and Trademark Office ("USPTO") on March 14, 2017 for use in connection with "clothing apparel, namely, scarves, mufflers, dresses, skirts, sweaters, coats, ponchos, jumpers, gloves, caps, blouses," in International Class 25. Applicant notes that its applied for mark includes a distinct design element.

4. U.S. Trademark Application Serial No. 87370054 was filed on March 14, 2017 on the basis of use of the mark in commerce under Section 1(a), with an asserted first use date of August 2015 and first use in commerce date of August 5, 2016.

RESPONSE:

Applicant admits that the USPTO records reflect the alleged averments of paragraph 4.

5. Opposer has used the "SAND" mark in commerce in the U.S. in connection with clothing products in Class 25 and retail services for clothing in Class 35 since prior to Applicant's actual or constructive date of first use of the alleged mark "SAND RIVER & Design", continuously, until the present time.

RESPONSE:

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

6. Opposer has devoted substantial time, money, and effort in establishing and maintaining a high standard of quality for goods and services provided under its "SAND" mark. As a result, Opposer's "SAND" mark has become widely and favorably known to the public in connection with its clothing products and retail services for clothing, and Opposer has developed substantial goodwill and name recognition in its "SAND" mark.

RESPONSE:

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

7. Opposer currently uses its "SAND" mark in the U.S. in connection with a wide variety of clothing products and in connection with retail store services featuring clothing. Attached as Exhibit 2 are examples of Opposer's trademark and service mark use of "SAND".

RESPONSE:

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

8. There is no issue as to priority. The filing date of Opposer's U.S. Registration for "SAND" and Opposer's use of the "SAND" mark are earlier than Applicant's asserted first use date of its "SANDRIVER & Design" mark and earlier than the filing date of U.S. Application No. 87370054.

RESPONSE:

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

9. Applicant's proposed mark "SANDRIVER & Design" is confusingly similar to Opposer's registered trademark "SAND", due to the similarities in sight, sound, meaning and connotation, and the fact that Applicant's proposed mark wholly incorporates Opposer's registered mark "SAND".

RESPONSE:

Applicant denies the allegations of paragraph 9.

10. The Class 25 goods covered in U.S. Application Serial No. 87370054 are highly related to, if not identical to, the Class 25 goods covered in U.S. Registration No. 3046413 and are highly similar to, if not identical to, the clothing goods sold in the retail store services covered in Class 35 in U.S. Registration No. 3046413.

RESPONSE:

Applicant admits that some of the Class 25 goods covered in U.S. Application Serial No. 87370054 overlap with the Class 25 goods covered in U.S. Registration No. 3046413 but denies the remaining allegations of paragraph 10.

11. As a result of the public's association of "SAND" with Opposer, as well as Opposer's prior rights in the "SAND" mark, Applicant's use and registration of the highly similar proposed mark "SAND RIVER & Design" for use in connection with Class 25 goods that are highly related, if not identical to, Opposer's Class 25 goods and Opposer's Class 35 retail store services featuring clothing, is likely to cause confusion, mistake or deception as to the source, origin or affiliation of Applicant's goods, in that consumers are likely to be confused that Applicant's "SANDRIVER & Design" products originate with, are affiliated with or are sponsored by Opposer.

RESPONSE:

Applicant denies the allegations of paragraph 11.

12. If U.S. Trademark Application Serial No. 87370054 for the highly similar proposed mark "SANDRIVER & Design" is permitted to register despite this likelihood of confusion, Opposer's right to use its "SAND" mark will be impaired, and Opposer will be damaged.

RESPONSE:

Applicant denies the allegations of paragraph 12.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim.
2. The common term "SAND" is in use as a component element of trademarks by numerous third parties in connection with goods and services in International Classes 25 and 35. As a result, consumers of the relevant products are unlikely to associate the "SAND" term alone with any one source. Thus, Applicant is free to use and register its mark SANDRIVER (one word) plus distinct design element since many third parties use and registered the term "SAND" plus additional wording for goods and services in International Classes 25 and 35.
3. On information and belief, Opposer's claims are barred under the doctrine of laches.

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

Respectfully submitted,

Dated February 23, 2018

By /Tanja Proehl/

Tanja Proehl
Attorney for APPLICANT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of this paper has been served upon attorney of record in this proceeding, by email to their email address of record addressed to

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Sheridan Ross P.C.
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Attorney for Opposer

on this date.

Respectfully submitted,

Dated: February 23, 2018
Chicago, Illinois

/Tanja Proehl/
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