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

Proceeding	91239541
Party	Defendant Oaklandish, LLC
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Date	04/26/2018
Attachments	Answer - TBL Licensing LLC v. Oaklandish LLC.pdf(123541 bytes)

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

In the consolidated matter of Trademark Application

Serial Nos.: 87/566,806
Filed: August 13, 2017
Published: January 2, 2018
For the Trademark: Leafless Tree Mark

TBL LICENSING, LLC

Opposer,

v.

OAKLANDISH, LLC

Applicant.

Opposition No. 91239541

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

Oaklandish, LLC ("Applicant"), by and through its counsel, hereby answers the Notice of Opposition by addressing each allegation and stating affirmative defenses.

ANSWER TO NOTICE OF OPPOSITION

Answering the preamble of the Notice of Opposition, Applicant is without sufficient knowledge or information to admit or deny TBL Licensing, LLC's ("Opposer") mailing address and on that basis denies the same. Applicant denies that Opposer will be damaged by the registration of the designation shown in Application Serial No. 87/566,806. Applicant admits that it filed Application Serial No. 87/566,806 on August 13, 2017. Applicant admits that it has a mailing address of 291 3rd Street, Oakland, California 94607. Except as specifically admitted herein, the allegations of the preamble of the Notice of Opposition are denied.

1. Answering the allegations of Paragraph 1 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations outlined in Paragraph 1, and on that basis, denies the allegations.

2. Answering the allegations of Paragraph 2 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations outlined in Paragraph 2, and on that basis, denies the allegations.

3. Answering the allegations of Paragraph 3 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations outlined in Paragraph 2, and on that basis, denies the allegations.

4. The registrations listed in Paragraph 4 of the Notice of Opposition, on file with the United States Patent and Trademark Office (USPTO), speak for themselves. Except as specifically admitted herein, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations outlined in Paragraph 4, and on that basis, denies the allegations.

5. Answering the allegations of Paragraph 5 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations outlined in Paragraph 5, and on that basis, denies the allegations.

6. The allegations in Paragraph 6 are admitted.

7. The allegations in Paragraph 7 are admitted.

8. Applicant admits that the marks displayed in this allegation are the marks that are the subject of the asserted registrations and of Applicant's opposed application, respectively.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

WHEREFORE, Applicant prays that Opposer's requests in the Prayer be denied.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses without conceding that it has the burden of proof or burden of producing evidence with respect to any of these issues.

First Affirmative Defense

There is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant's Mark and Opposer's Mark differ in sight and meaning, and therefore are not confusingly similar.

The target audience of Opposer and Applicant and the purchasers of each party's products are sophisticated, highly brand conscious, and able to distinguish between the two tree designs. Due to the nature of brand loyalty within each party's industry and the price point of each party's apparel, the purchasing decisions for each party's consumers are made with particularity, and are focused and intentional. Applicant's goods and the Oaklandish brand family are well-known and represent civic and community pride for the city of Oakland. Consumers of Applicant's goods are enthusiastic about representing Oakland, and they are fiercely loyal to and very knowledgeable about the Oaklandish brand family, because of the meaning the brand carries. In addition, the trade channels for each party's goods are entirely different.

Furthermore, Opposer's tree design mark is weak and entitled to narrow rights, if any, because Opposer's Mark already coexists with numerous similar tree design trademarks used in connection with apparel. Furthermore, with various tree design marks in use, the consuming public understands how to distinguish between tree design trademarks when evaluating the source of apparel and/or when making a purchasing decision.

Second Affirmative Defense

Opposer's claims in Opposer's Notice of Opposition are barred under the doctrine of estoppel.

Third Affirmative Defense

Opposer's claims in Opposer's Notice of Opposition are barred by waiver.

Fourth Affirmative Defense

Opposer's claims in Opposer's Notice of Opposition are barred by laches.

Fifth Affirmative Defense

Applicant hereby gives notice that it reserves all rights to assert additional defenses that are not now known but may later become known through discovery or other means.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant as it deems just.

Dated: April 26, 2018

Respectfully Submitted,

BRAND & BRANCH LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26 day of April 2018 a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served upon Opposer by electronic mail, addressed as follows:

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