ESTTA Tracking number: **ESTTA902397**

Filing date: **06/11/2018**

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

Proceeding	91240394
Party	Defendant Caldwell, Jamin Miles, Courtney
Correspondence Address	CALDWELL, JAMIN ERDMAN PLACE 15G 140 BRONX, NY 10475 UNITED STATES Email: BKCALDWELL02@YAHOO.COM
Submission	Opposition/Response to Motion
Filer's Name	Jamin Caldwell
Filer's email	chiumba@msn.com, bkcaldwell02@yahoo.com
Signature	/Jamin Caldwell/
Date	06/11/2018
Attachments	Answer To Notice of Opposition.pdf(236263 bytes)

Attorney Docket:

007834.00215

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Nike, Inc. Opposer, vs. Jamin Caldwell, Courtney Miles Applicants.	In the Matter of Trademark Applicants Jamin Caldwell, Courtney Miles **Mark:** JUST DREW IT! **Serial No.:** 87/381,081 **Filed:** March 22, 2017 Published in the Official Gazette dated December 5, 2017

ANSWER TO NOTICE OF OPPOSITION

Applicants, Jamin Caldwell and Courtney Miles, pro se litigants, hereby answer the Notice of Opposition filed by Nike, Inc. ("Opposer") as follows:

1. Answering paragraph 1 of the Notice of Opposition. The allegations of paragraph 1 are admitted.
2. Answering paragraph 2 of the Notice of Opposition. The allegations of paragraph 2 are admitted.
3. Answering paragraph 3 of the Notice of Opposition. The allegations of paragraph 3 are admitted.
4. Answering paragraph 4 of the Notice of Opposition. The allegations of paragraph 4 are admitted.
5. Answering paragraph 5 of the Notice of Opposition. The allegations of paragraph 5 are admitted.
6. Answering paragraph 6 of the Notice of Opposition. The allegations of paragraph 6 are admitted.
7. Answering paragraph 7 of the Notice of Opposition. The allegations of paragraph 7 are admitted.
8. Answering paragraph 8 of the Notice of Opposition. The allegations of paragraph 8 are admitted.

9. Answering paragraph 9 of the Notice of Opposition. The allegations of paragraph 9 are admitted.
10. Answering paragraph 10 of the Notice of Opposition. The allegations of paragraph 10 are admitted.
11. Answering paragraph 11 of the Notice of Opposition. The allegations of paragraph 11 are admitted.
12. Answering paragraph 12 of the Notice of Opposition. The allegations of paragraph 12 are admitted.
13. Answering paragraph 13 of the Notice of Opposition. The allegations of paragraph 13 are admitted.
14. Answering paragraph 14 of the Notice of Opposition. The allegations of paragraph 14 are admitted.
15. Answering paragraph 15 of the Notice of Opposition. The allegations of paragraph 15 are admitted.
16. Answering paragraph 16 of the Notice of Opposition. The allegations of paragraph 16 are admitted.
17. Answering paragraph 17 of the Notice of Opposition. The allegations of paragraph 17 are admitted.
18. Answering paragraph 18 of the Notice of Opposition. The registration of the Applicant's mark would not damage or injure the Opposer. The remaining allegations of paragraph 18 are admitted.
19. Answering paragraph 19 of the Notice of Opposition. Applicant repeats and re-alleges paragraphs 1 through 18 as paragraph 19 of this answer.
20. Answering paragraph 20 of the Notice of Opposition. The allegations of paragraph 20 are admitted.
21. Answering paragraph 21 of the Notice of Opposition. Applicant's inspiration for the mark "Just Drew It" was inspired by the music video for the song "Beat It". The song is performed by the world famous singer Michael Jackson. The video for this song was released on February 14, 1983. The lyrics for the song contain the phrase: **"**Just Beat It.**"** The music video also features dancers who are wearing t-shirts and jackets emblazoned with custom artwork. The applicants are musicians and graphic artists who were inspired by a music video. The applicants were not aware of the Opposer's "Just Do It" mark at the time the application was filed. The allegations of paragraph 21 are denied.

22. Answering paragraph 22 of the Notice of Opposition.

The phrase "Just Do It" has the following meaning:

a. Just, (*adverb*) Only, Simply, Merely

b. Do (*verb*) To perform; to execute

c. It (pronoun) used to refer to a thing previously mentioned or easily identified.

The phrase "Just Drew It" has the following meaning:

a. Just (*adverb*) Moments ago, recently

b. Drew (*verb)* Past tense of *Draw,* produced an image (of someone or something) by making lines and marks.

c. It (pronoun) used to refer to a thing previously mentioned or easily identified.

Each mark must be considered in its entirety. "Just Do It" is telling the reader to simply perform some action. The word "It" does not specify the action. The mark "Just Do It" is a suggestive mark. "Just Drew It!" is informing the reader that moments ago a third-party completed the drawing emblazoned on the article of clothing. The word "It" in "Just Drew It" refers to the drawing that has been emblazoned on the article of clothing. "As a matter of fact, the meaning of words in trademarks is often an important consideration in determining whether likelihood of confusion exists." (See The Seven-Up Company v. Tropicana Products, Inc., 356 F. 2d 567 (C.C.P.A. 1966)). The opposer is seeking trademark protection that is afforded to fanciful or coined marks. The opposer is aware that a mark created with plain English words does not allow the monopolization of all marks with similar wording and completely difference meaning. The allegations of paragraph 22 are denied.

23. Answering paragraph 23 of the Notice of Opposition. The allegations of paragraph 23 are denied.

24. Answering paragraph 24 of the Notice of Opposition. The opposer and the applicant will be selling to different markets. The opposer is marketing high-priced sports apparel to consumers who idolize or are fanatics of world famous athletes. The opposer sells articles of clothing for hundreds of dollars. The applicant has never sold and will never sell an article of clothing for more than $10 (USD). The allegations of paragraph 24 are denied.

25. Answering paragraph 25 of the Notice of Opposition. The allegations of paragraph 25 are denied.
26. Answering paragraph 26 of the Notice of Opposition. Applicant repeats and re-alleges paragraphs 1 through 25 as paragraph 26 of this answer.
27. Answering paragraph 27 of the Notice of Opposition. The allegations of paragraph 27 are admitted.
28. Answering paragraph 28 of the Notice of Opposition. The allegations of paragraph 28 are admitted.
29. Answering paragraph 29 of the Notice of Opposition. In the year 1989, when the opposer's mark was first registered, the ability of a consumer to discover the origin of a mark or goods was severely limited. As of this writing, according to www.statista.com, nearly 70% of the US population owned a cell phone by the end of the year 2017. In the same year, the number cell phone users worldwide reached 2.1 Billion. The vast majority of these phones have internet access. If one wanted to know the originator of goods, one could simply search a variety of search engines, video hosting services or the company's website directly on their cell phone. Furthermore, the applicant's goods will never be sold next to the opposer's goods. Today's consumers want the authentic products of their favorite designers and will go through every length to confirm their authenticity. The allegations of paragraph 29 are denied.
30. Answering paragraph 30 of the Notice of Opposition. The allegations of paragraph 30 are denied.
31. Applicant further affirmatively alleges that there is no **Likelihood of Confusion** or **Dilution by Blurring** because Applicant's and Opposer's marks are remarkably dissimilar.

WHEREFORE, Applicant requests that the notice of opposition be dismissed.

Respectfully submitted,

Jamin Caldwell & Courtney Miles

By: /Jamin Caldwell/
By: /Courtney Miles/
Jamin Caldwell & Courtney Miles
140 Erdman Place, 15G
Bronx, NY 10475
(646) 755-4968
Applicants, Pro Se Litigant

Date: Monday, June 11th, 2018