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

Proceeding	91243382
Party	Defendant Hubson Campervans, Inc.
Correspondence Address	LOUIS T PERRY FAEGRE BAKER DANIELS LLP 300 NORTH MERIDIAN STREET , SUITE 2700 INDIANAPOLIS, IN 46204 UNITED STATES tmindy@FaegreBD.com 317-237-1089
Submission	Answer
Filer's Name	Louis Perry
Filer's email	LOUIS.PERRY@FAEGREBD.COM, tmindy@faegrebd.com
Signature	/Louis Perry/
Date	10/15/2018
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Serial No. 87779054

Indie Campers, S.A.

Opposer,

v.

Hubson Campervans, Inc.

Applicant.

Opposition No. 91243382

**Applicant's Answer and Affirmative  
Defenses**

For its Answer to the August 29, 2018, Notice of Opposition to Application Serial No 87779054 (the "Notice") filed by Indie Campers, S.A. ("Opposer"), Hubson Campervans, Inc. ("Applicant"), an Indiana corporation having its principal place of business at 101 W. Ohio Street, Suite 1350 Indianapolis, Indiana 46204, answers and alleges as follows.

Except as hereinafter expressly admitted, qualified, or otherwise answered, Applicant denies each and every allegation, matter, statement, and thing asserted in Opposer's Notice.

1. Application Serial No. 87779054 was filed on January 31, 2018 for the mark INDIE CAMPERS under 15 U.S.C. §1051(b), intent-to-use. The application was published for opposition on July 3, 2018 under the following goods and services: "Rental and leasing of passenger vans; rental of motor vehicles; rental of vehicles; vehicle rental" in International Class 039.

**ANSWER:** Admitted.

2. Opposer is in the business of offering and providing services that are identical to that of Applicant, *inter alia*, rental and leasing of passenger vans, rental of motor vehicles, and rental of vehicles.

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and on that basis denies them.

3. Opposer is the owner of all right, title and interest in U.S. Trademark Application No. 88080717 for INDIE CAMPERS, filed August 16, 2018 under 15 U.S.C. §1051(a), use in commerce

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and on that basis denies them, except to the extent that U.S. Application Serial No. 88080717 speaks for itself.

4. Opposer has common law rights to the mark INDIE CAMPERS, as well as various other marks, dating back to before any use of Applicant's INDIE CAMPERS mark for the goods and services listed in Application Serial No. 87779054

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4, and on that basis denies them.

5. Opposer has offered and sold services under the INDIE CAMPERS mark and various related common law marks in the United States continuously since at least as early as 2016.

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, and on that basis denies them.

6. Since well prior to any use by Applicant of the challenged mark in connection with the goods and services listed in its application, Opposer has extensively and continuously used, advertised and promoted the INDIE CAMPERS mark for, *inter alia*:

- a. Vehicle rental; rental of motor vehicles; rental and leasing of passenger vans in class 039.
- b. Providing a website featuring information on travel in class 039

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6, and on that basis denies them.

7. Applicant seeks registration for the INDIE CAMPERS mark for the goods and services identified in paragraph 1 above.

**ANSWER:** Admitted.

8. Applicant has not claimed use in commerce of the INDIE CAMPERS mark.

**ANSWER:** Applicant admits that the subject application was filed on an intent-to-use basis. Applicant denies all other allegations contained in paragraph 8.

9. Upon information and belief, Applicant made no valid use of the challenged mark for the published goods and services prior the first use of the INDIE CAMPERS Marks by Opposer.

**ANSWER:** Applicant denies that its use of the INDIE CAMPERS Mark is in any way invalid. Applicant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 9, and on that basis denies them.

10. Prior to Applicant's filing of Application Serial No. 87779054, Applicant's representative, Mr. Jason Kashman, had several discussions with the CEO of Indie Campers, Mr. Hugo Oliveira, to discuss Indie Campers' business.

**ANSWER:** Applicant admits that Mr. Kashman and Mr. Oliveira participated in discussions regarding Opposer's European business. Applicant denies any and all other allegations of Paragraph 10.

11. Mr. Kashman and Mr. Oliveira met in person to discuss Indie Campers' business on April 6<sup>th</sup>

**ANSWER:** Admitted.

12. Prior to Applicant's filing of Application Serial No. 87779054, Applicant was aware of Opposer's use of the INDIE CAMPERS mark in the United States.

**ANSWER:** Denied.

13. Mr. Kashman signed a confidentiality and non-disclosure agreement with Opposer.

**ANSWER:** Admitted.

14. The confidentiality and non-disclosure agreement, in paragraph 8, contains a "no license" provision, which states that "neither party grants the other party any rights under any patent, trademark, mask work right, or copyright the party holds..."

**ANSWER:** Applicant admits that the Opposer accurately transcribes a portion of paragraph 8 in the referenced agreement. To the extent paragraph 14 contains any other allegations, the same are denied.

15. Opposer has not conveyed any rights in its INDIE CAMPERS mark to Applicant.

**ANSWER:** Admitted. To the extent that Paragraph 15 contains or implies any allegations that (i) Opposer owns any rights in the INDIE CAMPERS mark in the United States or (ii) such a conveyance was required in any way, Applicant denies all such allegations.

16. Applicant knew that the INDIE CAMPERS mark was owned by Indie Campers.

**ANSWER:** Denied.

17. By virtue of this meeting, Applicant knew that Indie Campers intended to further expand its business within the United States beyond its existing United States sales and other activities.

**ANSWER:** Denied.

18. Applicant filed Application Serial No. 87779054 even though it was aware that it was not the owner of the INDIE CAMPERS mark.

**ANSWER:** Denied.

19. Applicant misappropriated the trademark INDIE CAMPERS from its rightful owner, in an attempt to capitalize on the brand recognition established by Indie Campers.

**ANSWER:** Denied.

20. Applicant applied for the INDIE CAMPERS mark solely to block Indie Campers' expansion within the United States.

**ANSWER:** Denied.

21. Based on the facts alleged in paragraphs 11-19 above, Application Serial No. 87779054 is void *ab initio*.

**ANSWER:** Denied.

22. Based on the facts alleged in paragraphs 11-20 above, Applicant applied for the INDIE CAMPERS mark in bad faith.

**ANSWER:** Denied.

23. The Declaration of Application Serial No. 87779054 was signed by Mr. Kashman.

**ANSWER:** Admitted.

24. The Declaration states that "The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered."

**ANSWER:** Denied. The language quoted in Paragraph 24 applies to applications filed under 15 U.S.C. § 1051(a). Applicant filed its application under 15 U.S.C. § 1051(b).

25. Upon information and belief, Mr. Kashman personally knew Indie Campers was the true owner of the INDIE CAMPERS mark.

**ANSWER:** Denied.

26. The statement that the signatory believes that the applicant is the owner of the trademark/service mark sought to be registered is false.

**ANSWER:** Denied. Applicant further denies that its application contained no such a statement, as it was filed under 15 U.S.C. § 1051(b).

27. The statement that the signatory believes that the applicant is the owner of the trademark/service mark sought to be registered is a material misrepresentation.

**ANSWER:** Denied. Applicant further denies that its application contained no such a statement, as it was filed under 15 U.S.C. § 1051(b).

28. Indie Campers discovered that Applicant had filed the Application for INDIE CAMPERS shortly after it was filed.

**ANSWER:** Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28, and on that basis denies them.

29. Mr. Oliveira had a telephone call with Mr. Kashman in which Mr. Oliveira asked Mr. Kashman why he had filed for the INDIE CAMPERS mark knowing that Indie Campers owned the mark.

**ANSWER:** Applicant admits that Mr. Oliveira phoned Mr. Kashman and discussed the INDIE CAMPERS mark. Applicant denies any and all other allegations of Paragraph 29.

30. Mr. Kashman told Mr. Oliveira that it had only applied for the INDIE CAMPERS mark in association with a particular model of vehicle as the listed goods.

**ANSWER:** Denied.

31. Mr. Kashman's statement to Mr. Oliveira was false.

**ANSWER:** Applicant denies that Mr. Kashman made the referenced statement and further denies that Mr. Kashman made any false statements to Mr. Oliveira..

32. Upon information and belief, and based on the facts in paragraphs 29-31 above, Mr. Kashman intended to deceive Mr. Oliveira.

**ANSWER:** Denied.

33. Upon information and belief, and based on the facts plead with particularity in paragraphs 29-32 above, Mr. Kashman's statement that "the applicant is the owner of the trademark/service mark sought to be registered" was made with the intent to deceive the Patent and Trademark Office.

**ANSWER:** Denied. Applicant further denies that its application contained no such a statement, as it was filed under 15 U.S.C. § 1051(b).

34. A finding of fraud requires that an Applicant made a false statement to the USPTO.

**ANSWER:** Paragraph 34 appears to recite a legal standard and, accordingly, no response is required. To the extent a response is required, Applicant denies the allegations of Paragraph 34.

35. A finding of fraud requires that the Applicant's false statement was material.

**ANSWER:** Paragraph 35 appears to recite a legal standard and, accordingly, no response is required. To the extent a response is required, Applicant denies the allegations of Paragraph 35.

36. A finding of fraud requires that the false, material statement was made with the intent to deceive the USPTO.

**ANSWER:** Paragraph 36 appears to recite a legal standard and, accordingly, no response is required. To the extent a response is required, Applicant denies the allegations of Paragraph 36.

37. Because the facts stated in paragraphs 23-33 above meet the requirements for finding fraud stated in paragraphs 34-36, the Application should be rejected on the grounds of fraud.

**ANSWER:** Paragraph 37 contains legal conclusions to which no response is required. To the extent Paragraph 37 contains factual allegations, the same are denied.

38. Applicant's INDIE CAMPERS mark is identical to Opposer's previously used mark, and is likely, when used in connection with the goods and services of Applicant, to cause confusion, to cause mistake, to deceive, or to dilute the Opposer's INDIE CAMPERS Mark.

**ANSWER:** Paragraph 38 contains legal conclusions to which no response is required. To the extent Paragraph 38 contains factual allegations, the same are denied.

39. Therefore, Application Serial No. 87779054 should be rejected based on priority and likelihood of confusion.

**ANSWER:** Paragraph 39 contains legal conclusions to which no response is required. To the extent Paragraph 39 contains factual allegations, the same are denied.

40. In the alternative, the registration of Applicant's INDIE CAMPERS mark on the Principal Register would be inconsistent with Opposer's rights under its aforementioned application and under the common law and would be damaging to Opposer.

**ANSWER:** Paragraph 40 contains legal conclusions to which no response is required. To the extent Paragraph 40 contains factual allegations, the same are denied.

#### **Affirmative Defenses**

1. Opposer fails to state a claim upon which relief can be granted.
2. The opposition is barred on the grounds of estoppel.
3. The opposition is barred because Opposer has not used its mark in the United States.

WHEREFORE, Applicant prays that this Opposition be dismissed with prejudice and on the merits.



Dated: October 15, 2018

Respectfully submitted,

**FAEGRE BAKER DANIELS LLP**

By: /s/Louis T. Perry  
Louis T. Perry  
FAEGRE BAKER DANIELS LLP  
300 North Meridian Street  
Suite 2700  
Indianapolis, IN 46204  
Phone: (317) 237-0300  
Fax: (317) 237-0000  
Email: [louis.perry@FaegreBD.com](mailto:louis.perry@FaegreBD.com)

*Attorney for Applicant*

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Opposition No. 91243382

**Applicant's Answer**

**CERTIFICATE OF SERVICE**

I, Louis T. Perry, do hereby certify that on October 15, 2018, a true and correct copy of Applicant's Answer will be filed electronically with the TTAB via ESTTA, and has been forwarded by electronic mail to counsel for the Opposer at the address as listed below:

Vanessa Otero  
Nuegeboren O'Dowd PC  
1227 Spruce Street, Suite 200  
Boulder, CO 80302  
United States  
vanessa@nodiplay.com  
craig@nodiplay.com  
paul@nodiplay.com

*/s/Louis T. Perry* \_\_\_\_\_

Louis T. Perry