

ESTTA Tracking number: **ESTTA939374**

Filing date: **12/05/2018**

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

| | |
|------------------------|--|
| Proceeding | 91243859 |
| Party | Defendant American Promotional Events, Inc. |
| Correspondence Address | ALAN S NEMES HUSCH BLACKWELL LLP 190 CARONDELET PLAZA, SUITE 600 ST LOUIS, MO 63105 UNITED STATES pto-sl@huschblackwell.com 314-480-1500 |
| Submission | Answer |
| Filer's Name | MICHELLE ALVEY |
| Filer's email | michelle.alvey@huschblackwell.com, pto-sl@huschblackwell.com, alan.nemes@huschblackwell.com |
| Signature | /Michelle Alvey/ |
| Date | 12/05/2018 |
| Attachments | AnswerFREEDOM.pdf(114447 bytes) |

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on December 5, 2018.

/Michelle Alvey/

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

Application Serial No. 87828259
Mark: FREEDOM

| | | |
|--------------------------|---|-------------------------|
| _____ |) | |
| DYNAMITE WHOLESale, LLC, |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. 91243859 |
| |) | |
| AMERICAN PROMOTIONAL |) | |
| EVENTS, INC. |) | |
| |) | |
| Applicant. |) | |

ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant American Promotional Events, Inc. (“Applicant”) and for its answer to the Notice of Opposition filed by Dynamite Wholesale, LLC (“Opposer”) states as follows:

1. Applicant admits that it filed Application No. 87828259 for the mark FREEDOM for “Fireworks” in Class 13. Applicant further states that Application No. 87828259 and the information from the electronic database records of the United States Patent and Trademark (“USPTO”) speak for themselves. Applicant denies all allegations in paragraph 1 not expressly admitted herein.

2. Applicant admits that Application No. 87828259 was filed on March 9, 2018 and that the stated basis for the Application is under Section 1(b) (15 U.S.C. Section 1051(b)). Applicant further states that Application No. 87828259 and the information from the electronic database records of the USPTO speak for themselves. Applicant denies all allegations in paragraph 2 not expressly admitted herein.
3. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3 of the Notice of Opposition and accordingly denies the same.
4. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 4 of the Notice of Opposition and accordingly denies the same.
5. Applicant admits that the USPTO records reflect that Opposer filed Application No. 88013087 on June 25, 2018 for the mark FREEDOM STICK for “Fireworks” in Class 13 and that the alleged first use date is October 31, 2011. Applicant further states that the USPTO records with respect to the status of Application No. 88013087 speak for themselves. Applicant denies all allegations in paragraph 5 not expressly admitted herein.
6. Applicant is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Notice of Opposition and accordingly denies the same.
7. Applicant denies the allegations in paragraph 7.
8. Applicant denies the allegations in paragraph 8.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

1. For further answer, and as an affirmative defense, Applicant states that Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.
2. For further answer, and as an affirmative defense, Applicant states that Opposer's Notice of Opposition is barred, in whole or in part, by the equitable doctrines of laches, acquiescence, waiver, unclean hands, and/or estoppel.
3. For further answer, Applicant states that its discovery and investigation continues and, accordingly, Applicant reserves the right to assert additional defenses or potential counterclaims as they become known.

WHEREFORE, Applicant prays that the Board dismiss Opposer's Notice of Opposition with prejudice, that the Board enter judgment in favor of Applicant and against Opposer, and for such other relief as the Board deems just and proper.

Respectfully submitted,

HUSCH BLACKWELL LLP

/Michelle Alvey/
Michelle W. Alvey
Michael J. Tolles
Alan S. Nemes
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 345-6488
(314) 345-6060

Attorneys for Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served via email on this 5th day of December upon:

GLENN K ROBBINS II
SPENCER FANE LLP
1 NORTH BRENTWOOD BLVD SUITE 1000
ST LOUIS, MO 63105
sfaction@spencerfane.com, grobbs@spencerfane.com

/Michelle Alvey/