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

Proceeding	91246046
Party	Defendant Hmptn Water LLC
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Date	03/05/2019
Attachments	Class 25 - Answer to Notice of Opposition.pdf(164028 bytes )

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

PEI LICENSING, INC.	)	
	)	
	)	Opposer,
	)	
v.	)	Opposition No. 91246046
	)	
HMPTN WATER, LLC	)	
	)	
	)	
	)	Applicant.
	)	
	)	Mark:
	)	U.S. Serial No. 87/798,148
	)	



**ANSWER TO NOTICE OF OPPOSITION**

Applicant Hmptn Water, LLC (“Applicant”), by and through its undersigned attorney of record, hereby answers the Notice of Opposition (“Opposition”), filed by PEI Licensing, Inc. (“Opposer”), as follows:

1. In answering Paragraph 1 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.
2. In answering Paragraph 2 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.
3. In answering Paragraph 3 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

4. In answering Paragraph 4 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

5. In answering Paragraph 5 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

6. In answering Paragraph 6 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

7. In answering Paragraph 7 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

8. In answering Paragraph 8 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

9. In answering Paragraph 9 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

10. In answering Paragraph 10 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

11. In answering Paragraph 11 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

12. In answering Paragraph 12 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

### **THE APPLICATION TO REGISTER THE OPPOSED MARK**

13. In answering Paragraph 13 of the Opposition, Applicant admits its intent-to-use Application for the mark (‘‘Applicant’s Mark’’) was filed on February 14, 2018, in connection with the following goods, among others: ‘‘clothing, namely, men’s, women’s and children’s tops, bottoms, headwear and footwear’’ in International Class 25. The Application was assigned Application Serial No.: 87/798,148 (‘‘Application’’).

14. In answering Paragraph 14 of the Opposition, Applicant was not aware of Opposer’s mark and therefore had no reason to seek consent or permission. Furthermore, the Examining Attorney did not find any likelihood of confusion with the Opposer’s mark during the prosecution phase because she never cited Opposer’s mark against Applicant’s Application.

15. In answering Paragraph 15, Applicant admits that the Application was approved for publication on December 5, 2018.

16. In answering Paragraph 16, Applicant admits that the Application was published in the Official Gazette of the USPTO on December 25, 2018.

17. In answering Paragraph 17 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

18. In answering Paragraph 18 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

### **OPPOSITION BASED ON A LIKELIHOOD OF CONSUMER CONFUSION**

19. Applicant repeats its responses to the allegations of paragraph 1-18 above, as though fully set-forth herein.

20. In answering Paragraph 20 of the Opposition, Applicant is without sufficient information or knowledge to form a belief about the truthfulness of the allegations contained therein, and thus denies the same.

21. In answering Paragraph 21 of the Opposition, Applicant denies the allegations raised therein.

22. In answering Paragraph 22 of the Opposition, Applicant denies the allegations raised therein.

23. In answering Paragraph 23 of the Opposition, Applicant denies the allegations raised therein.

24. In answering Paragraph 24 of the Opposition, Applicant denies the allegations raised therein.

25. In answering Paragraph 25 of the Opposition, Applicant denies the allegations raised therein.

#### **OPPOSITION BASED ON DILUTION**

26. Applicant repeats its responses to the allegations raised in paragraphs 1-25 above, as though set forth fully therein.

27. In answering Paragraph 27 of the Opposition, Applicant denies the allegations raised therein.

28. In answering Paragraph 28 of the Opposition, Applicant denies the allegations raised therein.

29. In answering Paragraph 29 of the Opposition, Applicant denies the allegations raised therein.

30. In answering Paragraph 30 of the Opposition, Applicant denies the allegations raised therein.

#### **AFFIRMATIVE DEFENSES**

In further answer to the Notice of Opposition, without waiver of any objection or an admission of sufficiency of the Opposition, Applicant asserts upon information and belief that:

#### **FIRST AFFIRMATIVE DEFENSE**

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition.

**SECOND AFFIRMATIVE DEFENSE**

Opposer is estopped from pursuing its claims by virtue of its fraud in obtaining the registration, either in Opposer's lack of use of the marks alleged or other grounds.

**THIRD AFFIRMATIVE DEFENSE**


Applicant reserves all affirmative defenses not stated here in the event that discovery reveals that they may be appropriate.

WHEREFORE, Applicant prays that the Board dismiss the Opposition and allow Applicant's prosecution to proceed.

Respectfully submitted,

Buchalter, PC

Date: March 5, 2019

By:   
\_\_\_\_\_  
Willmore F. Holbrow III  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
(213) 891-0700  
Attorneys for Applicant HMPTN WATER, LLC

**PROOF OF SERVICE**

I am employed in the County of Los Angeles , State of California. I am over the age of 18 and not a party to the within action. My business address is at BUCHALTER, A Professional Corporation, 1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017-1730.

On the date set forth below, I served the foregoing documents described as:

**ANSWER TO NOTICE OF OPPOSITION**

on all other parties and/or their attorney(s) of record to this action by  faxing,  e-mailing,  electronic transmission and/or  placing a true copy thereof in a sealed envelope as follows:

Monica M. Gutierrez  
Tom Monagan  
Norvell IP LLC  
PO Box 2461  
Chicago, IL 60690

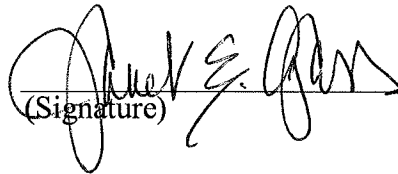
Email: [officeactions@norvellip.com](mailto:officeactions@norvellip.com)  
[tmonagan@norvellip.com](mailto:tmonagan@norvellip.com)  
[mgutierrez@norvellip.com](mailto:mgutierrez@norvellip.com)

**BY EMAIL** On March 5, 2019, I caused the above-referenced document(s) to be sent in electronic PDF format as an attachment to an email addressed to the person(s) on whom such document(s) is/are to be served at the email address(es) shown above, as last given by that person(s) or as obtained from an internet website(s) relating to such person(s), and I did not receive an email response upon sending such email indicating that such email was not delivered.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on March 5, 2019, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on March 5, 2019, at Los Angeles, California.

Janet E Gass

  
(Signature)