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

Proceeding	91246628
Party	Defendant Hawk Enterprises 2, LLC
Correspondence Address	PAUL A TAUFER IP GROUP OF DLA PIPER LLP US 1650 MARKET ST PHILADELPHIA, PA 19103-7301 UNITED STATES no email provided 215-656-3381
Submission	Motion to Amend/Amended Answer or Counterclaim
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Signature	/PaulATaufer/
Date	07/10/2019
Attachments	Motion for Leave to Amend with Consent.pdf(156923 bytes)

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

CYRIL HOURI,

OPPOSER,

v.

HAWK ENTERPRISES 2, LLC,

APPLICANT.

Opposition No. 91246628

Serial No. 76720538

Mark: BAKKT

MOTION FOR LEAVE TO AMEND ANSWER WITH CONSENT

Applicant Hawk Enterprises 2, LLC (“Applicant” or “Hawk”), by its attorneys, hereby respectfully moves the Board for an order granting Hawk’s motion to file an amended Answer to the Notice of Opposition. Pursuant to Fed. R. Civ. P. 15(a)(2), Hawk has secured the express written consent of the Opposer in this Proceeding to file an amended answer. *See* Exhibit 1. Hawk’s amended Answer is attached hereto as Exhibit 2. Because discovery is in its early stages – the parties just served their initial disclosures to each other on July 6, 2019 – the parties do not seek an amendment to the current scheduling order. 5 TTABVUE.

Dated: July 10, 2019

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Paul A. Taufer

Paul A. Taufer

Richard Cruz

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Attorneys for the Applicant
HAWK ENTERPRISES 2, LLC.

CERTIFICATE OF SERVICE

The undersigned counsel of record hereby certifies that a true and correct copy of the Motion to Amend Answer and Applicant's Amended Answer attached hereto as Exhibit 2 has been served upon the following:

Brian Roffe
(516) 448-6435
patentattorney@comcast.net

via email, this 10th day of July, 2019.

By: /s/ Paul A. Taufer
Paul A. Taufer

EXHIBIT 1

Brian Roffe
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July 2, 2019

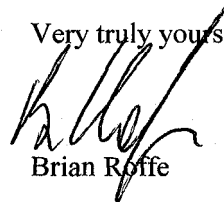
Michael L. Burns, Esq.
DLA Piper LLP (US)
1650 Market Street, Suite 5000
Philadelphia, PA 19103-7300

Re: Matter: Houri v. Hawk Enterprises 2, LLC
 Opposition No. 91246628
 Our ref.: 137.118

Dear Mr. Burns:

Responsive to your letter of June 25, 2019, consider this letter as our written consent under Fed. R. Civ. P. 15(a) for you to amend/supplement your pleadings to add the affirmative defenses of unlawful use and abandonment.

Very truly yours,



Brian Roffe

cc: Mr. Cyril Houri
BR/tm

EXHIBIT 2

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

CYRIL HOURI,

OPPOSER,

v.

HAWK ENTERPRISES 2, LLC,

APPLICANT.

Opposition No. 91246628

Serial No. 76720538

Mark: BAKKT

APPLICANT’S AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant Hawk Enterprises 2, LLC (“Applicant” or “Hawk”), hereby sets forth its Answers and Defenses to the Notice of Opposition (“Notice”) of Opposer Cyril Houri (“Opposer” or “Houri”) (the “Answer”) as follows:

Responding to the allegations contained in the first unnumbered paragraph of the Notice, Hawk admits that it is a Delaware Corporation with a mailing address of 1650 Market Street, One Liberty Place, Suite 5000, Philadelphia Pennsylvania and admits that it has filed an application to register the word mark BAKKT in Class Nos. 9, 36, 38, and 42, which was published for opposition in the Official Gazette on January 22, 2019 with the Application Serial No. 76/720,538 (“Application”). Hawk avers that its Application is subject to a motion to divide its application into a parent and child application. (6 TTABVue). Except as so admitted and averred, Hawk denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first unnumbered paragraph of the Notice and on that basis denies the remainder of allegations stated therein.

1. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice and on that basis denies the allegations stated therein.

2. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice and on that basis denies the allegations stated therein.

3. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice and on that basis denies the allegations stated therein.

4. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice and on that basis denies the allegations stated therein.

5. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice and on that basis denies the allegations stated therein.

6. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice and on that basis denies the allegations stated therein.

7. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice and on that basis denies the allegations stated therein.

8. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice and on that basis denies the allegations stated therein.

9. Hawk admits the allegations contained in Paragraph 9 of the Notice.

10. Hawk admits that it is the listed owner of the Application for the mark BAAKT for electronic commodities, crypto currencies, and digital assets exchange services; providing financial services in the nature of providing an exchange for commodities and commodities derivatives crypto currencies, and digital assets; providing online exchange services in the nature of online purchasing and selling of commodities and commodities derivatives, crypto currencies, and digital assets; providing online commodities and commodity derivatives, crypto currencies, and digital assets pricing and related financial information; financial services in the nature of assisting others with the completion of financial transactions for commodities and commodity derivatives, crypto currencies, and digital assets; services relating to financial transactions, namely, trading of commodities and commodity derivatives, crypto currencies, and digital assets; providing financial services in the nature of offering, sponsoring, managing and administering commodities, commodity derivatives, crypto currencies, and digital assets and related financial instruments; merchant services, namely, payment transaction processing services; financial custody services, namely, maintaining possession of financial assets for others for financial management purposes in International Class 36. Except as so admitted, Hawk denies any remaining allegations contained in Paragraph 10 of the Notice.

11. As to the allegations contained in the first sentence of Paragraph 11 of the Notice, Hawk admits that its Application was filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) on July 12, 2018. Except as so admitted, Hawk denies any remaining allegations

contained in the first sentence of Paragraph 11 of the Notice. The allegations contained in the second sentence of Paragraph 11 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 11 of the Notice and on that basis denies the allegations stated therein.

12. Hawk admits the allegations contained in Paragraph 12 of the Notice.

13. The allegations in Paragraph 13 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Notice and on that basis denies the allegations stated therein.

14. The allegations in Paragraph 14 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Notice and on that basis denies the allegations stated therein.

15. The allegations in Paragraph 15 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Notice and on that basis denies the allegations stated therein.

16. The allegations in Paragraph 16 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Notice and on that basis denies the allegations stated therein.

17. The allegations in Paragraph 17 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Notice and on that basis denies the allegations stated therein.

18. The allegations in Paragraph 18 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Notice and on that basis denies the allegations stated therein.

19. The allegations in Paragraph 19 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Notice and on that basis denies the allegations stated therein.

20. The allegations in Paragraph 20 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Notice and on that basis denies the allegations stated therein.

21. The allegations in the first sentence of Paragraph 21 of the Notice contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk denies the allegations in the first sentence of Paragraph 21 of the Notice. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and third sentences of Paragraph 21 of the Notice and on that basis denies the allegations stated therein.

22. The allegations in Paragraph 22 contain legal conclusions for which no answer is required. To the extent an answer is required, Hawk admits that the undersigned counsel for Hawk

received a letter dated August 23, 2018 from counsel for Opposer concerning the Application. Except as so admitted, Hawk denies any remaining allegations contained in Paragraph 22 of the Notice.

23. Hawk denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Notice and on that basis denies the allegations stated therein.

24. Hawk denies the allegations contained in Paragraph 24 of the Notice, and avers that Paragraph 24 contains legal conclusions for which no answer is required.

25. Hawk denies the allegations contained in Paragraph 25 of the Notice, and avers that Paragraph 25 contains legal conclusions for which no answer is required.

DEFENSES

FIRST DEFENSE

The Notice fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Opposer lacks standing to maintain this proceeding or to otherwise seek to oppose Hawk's Application.

THIRD DEFENSE

Opposer cannot demonstrate any likelihood that the public will be confused or misled as to the source of Applicant's goods and services or that Applicant's goods and services are associated with, or endorsed by, Opposer. Upon information and belief, Opposer's purported BACKT platform has not, and does not, perform any of the services listed in the Application. For example, upon information and belief, Opposer's purported BACKT platform does not function as a financial exchange and does not offer consumers the ability to trade cryptocurrency futures.

Upon information and belief, Opposer's purported services do not provide online commodities and commodity derivatives, crypto currencies, and digital assets pricing. Upon information and belief, Opposer's purported services do not offer, sponsor, manage or administer commodities, commodity derivatives, crypto currencies, and digital assets. Upon further information and belief Opposer's purported services do not include merchant services or financial information. Thus, no likelihood of confusion is caused by Applicant's use of its BAKKT mark as depicted in the Application.

FOURTH DEFENSE

Applicant's BAKKT mark creates a different overall commercial impression from that of Opposer's purported BACKT mark.

FIFTH DEFENSE

Applicant's goods and services under the BAKKT mark are distinct from Opposer's goods and services under its purported BACKT mark and are encountered by the relevant public in different ways.

SIXTH DEFENSE

Opposer's Notice of Opposition and claims are barred, precluded, or limited insofar as Opposer does not hold a valid or enforceable trademark in its purported BACKT mark.

SEVENTH DEFENSE

Opposer's Notice of Opposition and claims for relief are barred in whole or in part by the doctrine of unclean hands because Opposer does not have a federal registration for its purported BACKT mark. Opposer filed an application (Application Serial No. 88280408) to register the word mark "BACKT" on January 29, 2019, weeks before initiating the Notice of Opposition. On April 16, 2019, the United States Patent and Trademark Office ("USPTO") issued an office action

refusing registration of “BACKT” on multiple grounds, including for example, basing its priority date on domain information. As of the date of this Answer, Opposer has not responded to the USPTO’s office action refusing registration for the Opposer’s BACKT mark. Further, upon information and belief, Opposer does not have common law rights to its purported BACKT mark either, because Opposer has no bona fide prior use in commerce of the purported BACKT mark prior to July 12, 2018.

EIGHTH DEFENSE

Opposer’s Notice of Opposition and claims for relief are barred in whole or in part by Opposer’s bad faith because Opposer does not have a federal registration for its purported BACKT mark. Opposer filed an application (Application Serial No. 88280408) to register the word mark “BACKT” on January 29, 2019, weeks before initiating the Notice of Opposition. On April 16, 2019, the United States Patent and Trademark Office (“USPTO”) issued an office action refusing registration of “BACKT” on multiple grounds, including for example, basing its priority date on domain information. As of the date of this answer, Opposer has not responded to the USPTO’s office action refusing registration for the Opposer’s BACKT mark.. Further, upon information and belief, Opposer does not have common law rights to its purported BACKT mark either, because Opposer has no bona fide prior use in commerce of the purported BACKT mark prior to July 12, 2018.

NINTH DEFENSE

Opposer’s Notice of Opposition and claims are barred, precluded, or limited because Applicant has superior rights in Applicant’s BAKKT mark. Upon information and belief, Applicant’s Application filed on July 12, 2018 pre-dated Opposer’s purported use of the term “Backt” in commerce. Upon information and belief, Opposer does not use the term “Backt” in

commerce. Upon information and belief, Opposer lacks priority of right in its purported common law mark. Because Opposer cannot establish priority, the Application should proceed to registration on the Principal Registry of the United States Patent and Trademark Office and Opposer's Notice should be dismissed with prejudice.

TENTH DEFENSE

Opposer will not be damaged and is not likely to be damaged by the registration of the Application.

ELEVENTH DEFENSE

Opposer's Notice of Opposition and claims are barred, precluded, or limited insofar as Opposer has abandoned the mark BACKT in connection with its purported services. Opposer alleges that BACKT services are only available through the www.backt.com website. 1 TTABVUE at ¶ 1. Upon information and belief, the purported beta program available at www.backt.com has been disabled. Upon further information and belief, the Opposer has transferred the purported services offered under the Backt platform to a different platform called 0xFutures. Upon information and belief, Opposer intends to offer the services at issue under the name 0xFutures, and not BACKT. Because Opposer has abandoned whatever purported services offered under the mark BACKT without an intent to resume, the Application should proceed to registration on the Principal Registry of the United States Patent and Trademark Office and Opposer's Notice should be dismissed with prejudice.

TWELFTH DEFENSE

Opposer's Notice of Opposition and claims are barred, precluded, or limited insofar as any services offered by the Opposer under the purported Backt platform prior to July 12, 2018 was unlawful. Upon information and belief, the Opposer's purported services identified in Paragraph

2 of its Notice of Opposition require regulatory approval from at least one of the Commodity Futures Trading Commission, the Security and Exchange Commission, the Financial Crimes Enforcement Network, or by the New York State Department of Financial Services. Because unlawful use cannot give rise to trademark priority, the Application should proceed to registration on the Principal Registry of the United States Patent and Trademark Office and Opposer's Notice should be dismissed with prejudice.

THIRTEENTH DEFENSE

Applicant hereby reserves the right to amend its Answer and reserves any other defenses, at law or in equity, which become applicable after the substantial completion of discovery or otherwise in the course of the Opposition Proceeding.

WHEREFORE, Hawk requests that this Notice be dismissed with prejudice and that the Application be allowed to proceed to registration in Class Nos. 36, and such other and further relief as may be just and proper.

Dated: July 10, 2019

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Paul A. Taufer

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