ESTTA Tracking number: **ESTTA1055203**

Filing date: **05/13/2020**

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

Proceeding	91255070
Party	Defendant Olmstead, Mark
Correspondence Address	JAMES E. WALTON LAW OFFICES OF JAMES E. WALTON, P.L.L.C. 1169 N. BURLESON BLVD., SUITE 107-328 BURLESON, TX 76028 jim@waltonpllc.com no phone number provided
Submission	Answer
Filer's Name	Lee B. Hunt
Filer's email	lhunt@belaw.com, jcleveland@belaw.com
Signature	/Lee B. Hunt/
Date	05/13/2020
Attachments	Applicant Answer to Notice of Opposition 91255070.pdf(452632 bytes)

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

In the Matter of Trademark Application Serial No. 88372977, "WIWOGAMES"
Published in the *Official Gazette* on February 4, 2020.

VIVO MOBILE COMMUNICATION CO., LTD. Opposer, v. OLMSTEAD, MARK, an individual Applicant.	Opposition No.: 91255070

Applicant's Answer and Affirmative Defenses to Opposer's Notice of Opposition

Applicant Mark Olmstead (Applicant) files his Answer to the Notice of Opposition filed by Opposer Vivo Mobile Communication Co., Ltd. (Opposer) against United States Trademark Application Serial No. 88372977 for Applicant's mark "WIWOGAMES" and in support thereof would show the Trademark Trial and Appeal Board as follows:

Applicant's answers below correspond to the numbers in Opposer's Notice of Opposition.

1. Applicant has insufficient knowledge or information to admit or deny Opposer's identity, business organization, or its ownership of U.S. Trademark Registrations, and therefore Opposer's allegations in paragraph 1 are denied.

2. Applicant has insufficient knowledge or information to admit or deny the goods and/or services Opposer provides or sells. Further, applicant has insufficient knowledge or information to admit or deny the date opposer began selling its goods or services, and therefore Opposer's allegations in paragraph 2 are denied.

3. Applicant has insufficient knowledge or information to admit or deny the applications and/or registrations owned by opposer in this, or any foreign country, and therefore Opposer's allegations in paragraph 3 are denied.

4. Applicant denies that applicant is the predecessor in interest. Applicant has insufficient knowledge or information to admit or deny whether opposer has used its marks since 2001. Applicant has insufficient knowledge or information to admit or deny whether that use has been continuous, and therefore Opposer's allegations in paragraph 4 are denied.

5. Applicant denies the allegations in Paragraph 5 and has insufficient knowledge or information to admit or deny Opposer's fame in China, the United States, or elsewhere, and therefore Opposer's allegations in paragraph 5 are denied.

6. Applicant admits that on April 5, 2019, attorney James E. Walton filed U.S. Application Serial No. 88372977 for the mark "WIWOGAMES".

7. Applicant denies that opposer is being damaged or would be damaged by registration of the aforementioned mark.

8. Applicant admits that a Section 1(b) application for trademark registration requires applicants to state under oath that they have a *bona fide* intent to use the mark in interstate commerce.

9. Applicant denies that it lacked a *bona fide* intent to use the trademark in U.S. commerce with all the goods identified in the application at the time the application was filed, and therefore Opposer's allegations in paragraph 9 are denied.

10. Applicant denies the allegations of Opposer's paragraph 10.

11. Applicant admits it knew it had to have a bona fide intent to use at the time of filing the application. Applicant denies it lacked such intent.

12. Applicant denies the allegations of Opposer's paragraph 12.

13. Applicant denies the allegations of Opposer's paragraph 13.

14. Applicant has insufficient knowledge or information to admit or deny whether the opposer owns the referenced U.S. trademark registrations, and therefore, the allegations in Opposer's paragraph 14 are denied.

15. Applicant denies the allegations made in Opposer's paragraph 15.

16. Applicant denies the allegations in Opposer's paragraph 16.

17. Applicant denies that the goods it seeks to register are identical to those of opposer.

18. Applicant denies the allegation in Opposer's paragraph 18.

19. Applicant denies the allegation in Opposer's paragraph 19.

20. Applicant denies the allegations in Opposer's paragraph 20.

21. Pursuant to Fed. R. Civ. P. 11, Applicant generally denies the allegations set forth in Opposer's "Ground III."

22. Pursuant to Fed. R. Civ. P. 11, Applicant generally denies the allegations set forth in Opposer's "Ground IV."

FIRST AFFIRMATIVE DEFENSE

23. There is no likelihood of confusion between applicant's mark and Opposer's marks.

SECOND AFFIRMATIVE DEFENSE

24. Opposer alleges that applicant and opposer provide the exact same goods. However, Opposer's Notice of Opposition does not identify or reference those goods. To the extent Opposer's registrations include the goods applicant seeks to register, namely, Downloadable computer software for use as digital currency wallets for use in transferring money and vouchers via mobile phones, smart devices, and online computer networks, Opposer cannot demonstrate that it uses its registered mark for such goods. Accordingly, the goods and services identified in Opposer's registration do not accurately reflect the goods and services they offer in commerce. If Opposer cannot demonstrate that it ever provided these goods, its registration of such goods would constitute fraud on the office, the appropriate remedy for which is deletion of the goods and services that opposer is not actually providing, and the narrowing of the scope of its identification of goods and services to accurately reflect the limited scope of the goods and services opposer provides.

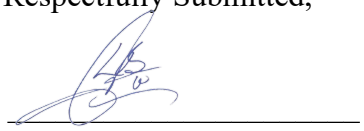
PRAYER

For the aforementioned reasons, Applicant contends that this opposition is baseless and without merit, and the Opposer has not shown how it is, or is likely to be, damaged by the registration of Applicant's trademark. Applicant denies that Opposer will be damaged by the registration of Applicant's trademark. Applicant further denies that Opposer will be damaged in any manner by the registration of Applicant's trademark, denies that Opposer is entitled to any of the relief requested in its Notice of Opposition, and requests:

1) this Notice of Opposition be dismissed; and

2) such other and further relief as is deemed just and proper.

Respectfully Submitted,



Lee B. Hunt
BRACKETT & ELLIS, P.C.
100 Main St.
Fort Worth, Texas 76102
State Bar of Texas No. 24082257
Tele: (817) 339-2440

Joseph F. Cleveland
BRACKETT & ELLIS, P.C.
100 Main St.
Fort Worth, Texas 76102
State Bar of Texas No. 04378900
Tele: (817) 339-2454
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that this answer is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at http://estta.uspto.gov/ on May 13, 2020.

Lee B. Hunt
BRACKETT & ELLIS, P.C.
100 Main St.
Fort Worth, Texas 76102
State Bar of Texas No. 24082257
Tele: (817) 339-2440