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

Proceeding	91265458
Party	Defendant Secret POS Systems, Inc.
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Date	12/29/2020
Attachments	Answer to Notice of Opposition .pdf(135655 bytes)

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

Information Builders, Inc.)	Opposition No. 91265458, consolidated
)	With Cancellation No. 92075507
)	
Opposer,)	
)	
v.)	
)	
Secret POS Systems, Inc.)	
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Secret POS Systems, Inc. (“Applicant”) by and through its undersigned attorneys, hereby submits its Answer to the Notice of Opposition filed by Opposer Information Builders, Inc. (“Opposer”). The following numbered paragraphs correspond to the numbering of the paragraphs used in the Notice of Opposition. Applicant reserves the right to amend or supplement this Answer.

In response to the unnumbered statements below the heading “Notice of Opposition,” Applicant denies that Opposer will be damaged by the registration of either of Applicant’s marks FOCUS (Serial No. 88/462,708) or FOCUS POS SYSTEMS (Serial No. 88/462, 711) (the “Applications”). Upon information and belief, Applicant admits that Opposer is a corporation of the State of New York, having a principal place of business at 2 Penn Plaza, New York, New York, 10121-2898. Applicant denies that Opposer has any grounds to maintain the opposition. All averments of the unnumbered statement below the heading “Notice of Opposition” that are not expressly admitted or otherwise responded to are denied.

1. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 1 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 1 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

2. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 2 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 2 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

3. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 3 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 3 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

4. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 4 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 4 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

5. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 5 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 5 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

6. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 6 of the Notice of Opposition and, therefore, denies and demands

strict proof of the same. All averments of Paragraph 6 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

7. Applicant lacks knowledge or information sufficient to form a basis as to the truth of the averments of Paragraph 7 of the Notice of Opposition and, therefore, denies and demands strict proof of the same. All averments of Paragraph 7 of the Notice of Opposition that are not expressly admitted or otherwise responded to are denied.

8. Denied. Applicant affirmatively avers that it filed a United States trademark application Serial No. 88/462,701 to register the mark MYFOCUS for use in connection with “downloadable mobile applications for use in restaurant management and point of sale solutions enabling data analytics, reports, managing loyalty rewards, gift cards, marketing functions, surveys, and cloud storage for hospitality establishments” in International Class 009 and “software as a service (SAAS) services, namely, hosting software for use by others in restaurant management and point of sale solutions enabling data analytics, reports, managing loyalty rewards, gift cards, marketing functions, surveys, and cloud storage for hospitality establishments” in International Class 042.

9. Denied. Applicant affirmatively avers that it filed a United States trademark application Serial No. 88/462,711 to register the mark FOCUS POS SYSTEMS (and design) for use in connection with “software as a service (SAAS) services and related analytics featuring software for use in management of restaurants and hospitality establishments” in International Class 042.

10. Denied.

11. Denied.

12. All averments not specifically admitted to are hereby denied. Applicant denies that Opposer is entitled to any relief.

DEFENSES

In further answer to the Notice of Opposition, Applicant asserts each of the following:

FIRST DEFENSE

The Notice of Opposition should be dismissed because it fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Opposer does not have legally protectable trademark rights in trademark FOCUS (as referred to in Paragraphs 2 through 7 of Opposer's Notice of Opposition). At best, Opposer's rights are "weak" and signify at best a very limited scope of protection due to the presence of many third party trademark registrations for marks including the term FOCUS for "software" related services, including without limitation, MICROFOCUS (Reg. No. 4,592,268), FOCUS 360 (Reg. No. 5,309,544), CORSEARCH FOCUS (Reg. No. 5,189,395), NINJA FOCUS (Reg. No. 6,111,581), THOUGHTFOCUS (Reg. No. 5,959,114), IMFOCUS (Reg. No. 5,903,754), CLIENT FOCUSED. RESULTS DRIVEN (Reg. Nos. 5,410,903; 4,633,488), NFOCUS SOLUTIONS BRIDGING THE GAP (Reg. No. 4,248,979), MICRO FOCUS (Reg. No. 4,591,168), SMARTFOCUS (Reg. No. 5,532,579), F FOCUSED FITNESS (Reg. No. 4,139,105), FRAUDFOCUS INTERCEPT (Reg. No. 3,104,058), S 247 SOLUTION FOCUSED (Reg. No. 3,927,257), and SUBROFOCUS (Reg. No. 3,104,059)

THIRD DEFENSE

There exists no likelihood of consumer confusion as the source of goods or services offered under the applied for marks identified in the Applications and any of the marks in which Opposer claims rights.

FOURTH DEFENSE

The applied for marks identified in the Applications do not impair Opposer's free use of any trademark rights it claims.

FIFTH DEFENSE

During approximately 20 years of co-existence, there have been no known instances of actual confusion as the source of goods or services offered under the applied for marks identified in the Applications and any of the marks in which Opposer claims rights.

SIXTH DEFENSE

The Notice of Opposition should be dismissed in whole or in part because Opposer's claims are barred by the equitable doctrines of waiver, estoppel, acquiescence, unclean hands, and/or laches.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety with prejudice and that its applications Serial No. 88/462,711 to register the mark FOCUS POS SYSTEMS and Serial No. 88/462,701 to register the mark MYFOCUS proceed to registration.

Dated: December 29, 2020

Respectfully submitted,

s/ Laura P. Merritt

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing documents has been served on the following via e-mail to:

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on this the 29th day of December, 2020.

s/ Laura P. Merritt