

ESTTA Tracking number: **ESTTA1115462**

Filing date: **02/19/2021**

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

Proceeding	91267126
Party	Defendant Prime Integration, LLC
Correspondence Address	PRIME INTEGRATION, LLC 4707 LEHNENBERG ROAD KINTNERSVILLE, PA 18930-9754 UNITED STATES Primary Email: bfinney@primeintegration.com Secondary Email(s): tmapp@legalzoom.com No phone number provided.
Submission	Answer
Filer's Name	Niq Howard
Filer's email	niq@howard-ip.com
Signature	/niqhoward/
Date	02/19/2021
Attachments	2303.0002 - Opposition Answer - 91267126.pdf(126208 bytes)

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

In the matter of Application No. 90/077,348
For the design plus words mark: MW MTN WEAR
Filed on July 28, 2020

Mountain Hardwear, Inc.,)	
)	
Opposer,)	Opposition No. 91267126
)	Serial No. 90077348
V.)	
)	
Prime Integration, LLC,)	
)	
Applicant.)	
)	
)	

ANSWER TO NOTICE OF OPPOSITION

Prime Integration, LLC (“Applicant”) hereby answers Mountain Hardwear, Inc. (“Opposer”) Notice of Opposition and responds to the allegations as follows:

1. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 1 of the Notice of Opposition and on that basis denies said allegations.
2. Admitted.
3. Admitted.
4. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 4 of the Notice of Opposition and on that basis denies said allegations.
5. Applicant is unaware of information sufficient to respond as to the truth or falsity

of the allegations of Paragraph 5 of the Notice of Opposition and on that basis denies said allegations.

6. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 6 of the Notice of Opposition and on that basis denies said allegations.

7. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 7 of the Notice of Opposition and on that basis denies said allegations.

8. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 8 of the Notice of Opposition and on that basis denies said allegations.

9. Denied.

10. Denied.

11. Applicant is unaware of information sufficient to respond as to the truth or falsity of the allegations of Paragraph 11 of the Notice of Opposition and on that basis denies said allegations.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

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

Second Affirmative Defense

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Mark and the alleged trademarks of Opposer are not confusingly similar.

Third Affirmative Defense

Alternatively, any similarity between the Mark and Opposer's alleged trademark rights is restricted to that portion of the mark consisting of the term "Wear", which is not distinctive. Furthermore, Applicant has disclaimed the term "Wear", as was entered via Examiner's Amendment on November 17, 2020 (see Exhibit A). Similarly, as the term "Wear", which is not distinctive, brings Opposer's alleged trademark rights under the antidissection rule for any secondary meaning Opposer may have in its alleged Mountain Hard Wear trademark rights is narrowly circumscribed to the exact mark alleged and does not extend to any other feature of the trademark

Fourth Affirmative Defense

Opposer's rights in and to any portion of its alleged MOUNTAIN HARD WEAR trademark is generic, or in the alternative, merely descriptive of the goods or services offered under the mark. Opposer's alleged mark is therefore inherently unprotectable.

WHEREFORE, Applicant prays as follows:

- (a) this opposition be dismissed;
- (b) a registration for the mark MW MTN WEAR & DESIGN be issued to Applicant.

Dated: February 18, 2021

Respectfully submitted,

/Niq Howard/

Niq Howard, Esq.
Reg. No. 76,300
16434 Chaney Ln
Stilwell, KS 66085
785-393-7537

Attorney for Applicant

Exhibit A

EXAMINER'S AMENDMENT

Issue date: **November 17, 2020**

USPTO database searched; no conflicting marks found. The trademark examining attorney searched the USPTO database of registered and pending marks and found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

Application has been amended as shown below. As agreed to by Brian Finney on November 17, 2020, the examining attorney has amended the application as shown below. Please notify the examining attorney immediately of any objections. TMEP §707.

Otherwise, no response is required. *Id.* In addition, applicant is advised that amendments to the goods and/or services are permitted only if they clarify or limit them; amendments that add to or broaden the scope of the goods and/or services are not permitted. 37 C.F.R. §2.71(a).

Disclaimer

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use "WEAR" apart from the mark as shown.

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(c), 1213.08(a)(i).

/CarynGlasser/
Caryn Glasser
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CERTIFICATE OF SERVICE

I hereby certify that on the below date a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES has been served via email on the following:

Adam R. Kelly
Mountain Hardwear, Inc.
14375 NW Science Park Drive
Portland, OR 97229
United States
Primary Email: adkelly@columbia.com
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503-985-4000

Date: February 18, 2021

/Niq Howard/
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