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

Proceeding no.	91277331
Party	Defendant Uncommon Good Inc.
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	09/20/2022
Attachments	Amended Answer 9-20-2022.pdf(312216 bytes)

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

UNCOMMONGOODS, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91277331
	:	
UNCOMMON GOOD, INC.,	:	
	:	
Applicant.	:	

Application Serial No. 88/854,957
Mark: UNCOMMON GOOD

AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Applicant, UNCOMMON GOOD, INC., (“Applicant”), denies that Opposer is entitled to any relief sought in its Notice of Opposition and responds below to the numbered grounds for opposition in this matter as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies the same.
4. Denied.
5. Denied.
6. Denied.
7. Denied.

8. Admitted.
9. Denied.
10. Denied.
11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and therefore denies the same.
12. Denied.
13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and therefore denies the same.
14. Denied.
15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and therefore denies the same.
16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and therefore denies the same.
17. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and therefore denies the same.
18. Denied.
19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and therefore denies the same.
20. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and therefore denies the same.
21. Denied.
22. Admitted.
23. Admitted.

24. Admitted.

25. Admitted.

26. Denied.

27. Denied.

28. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and therefore denies the same.

29. Denied.

30. Denied.

31. Denied.



Applicant denies that Opposer is entitled to any relief sought in its Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant asserts the following Affirmative Defenses and reserves the right to assert additional Affirmative Defenses that are discovered during the course of this Opposition.

1. Opposer fails to state a claim upon which relief may be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition in that Opposer is not the owner of record of nearly all of the trademark registrations recited in the Notice of Opposition and further, Opposer has not pleaded with particularity any evidence establishing the alleged common law rights, and further the alleged rights relate to goods and services that travel in different channels of trade than Applicant's services.
2. Opposer has not and will not be damaged by the registration of the trademark UNCOMMON GOOD by Applicant, and therefore lacks standing to oppose the application. There is no likelihood of confusion. The marks are dissimilar, used on

unrelated goods and distributed through different channels of trade and classes of purchasers, there are many similar marks in use on similar goods, the nature and extent of any actual confusion is de minimis, and the Opposer's mark is not famous.

3. There is no likelihood of confusion, mistake, or deception between Opposer's alleged marks and Applicant's mark when considered in their entirety. Among other things, Applicant's mark is used on different goods and services from those listed in Opposer's registrations and applications and Applicant targets different consumers in different market spaces from Opposer. Opposer sells consumer goods (gifts, home goods and merchandise) for profit and donates \$1 to charity. Applicant offers prizes in the nature of trips and exclusive art worth \$35,000+ and the price points are significantly higher than any retail consumer goods sold by Opposer.
4. Applicant's mark is distinctive in sound and appearance, meaning, connotation and commercial impression from , , UNCOMMON GIFTS, UNCOMMON GIFTS, THE UNCOMMON GREEN, UNCOMMON PERKS, UNCOMMON EXPERIENCES, and UNCOMMON GOODS BETTER TO GIVE and/or BETTER TO GIVE.
5. Opposer has failed to use and/or continuously use UNCOMMON GOODS for "a service which coordinates and assists in the charitable giving of others," and/or "charitable fundraising, organizing, promoting and running charitable and non-profit fundraising campaigns for others; Organizing, promoting, and administering sweepstakes drawings as fundraisers on behalf of charitable and non-profit entities." Opposer does not provide any sweepstakes on its website and Opposer has not included any sweepstakes or charitable contributions in its trademark applications and registrations.

6. Opposer has come to the TTAB with unclean hands by stating in the Notice of Opposition:

“The description of Opposer’s services in U.S. Trademark Application Serial No. 88/873,864 has not yet been finalized, and Opposer has requested that those services be further specified to include the wording: “charitable fundraising; organizing, promoting, and running charitable and non-profit fundraising campaigns for others; Organizing, promoting, and administering sweepstakes drawings as fundraisers on behalf of charitable and non-profit entities””

(Notice of Opposition, ¶13).

However, Opposer has **not** filed such request for amendment of the identification of services in U.S. Application Serial No. 88/873,864. Opposer’s allegation constitutes a false representation to the TTAB regarding its trademark application and trademark rights. Opposer’s allegation constitutes an intentional false representation to the TTAB regarding its business activities, as Opposer does not provide any sweepstakes on its website. The actions of Opposer constitute unclean hands such that its Notice of Opposition should be dismissed.

7. The term UNCOMMON is merely descriptive of Opposer’s goods and services that are unconventional, rare, or atypical. There are many similar marks in use on similar goods, the nature and extent of any actual confusion is de minimis, and the Opposer’s mark is not famous. Opposer’s mark is a weak mark that it entitled to a very narrow scope of protection and its rights are insufficient to establish a likelihood of confusion.
8. The term GOODS is merely descriptive of Opposer’s goods and services and was disclaimed in registration nos. 2,716,619 and 2,716,620 and application nos. 88/873,836 and 88/873,864.

9. The UNCOMMON GOODS and UNCOMMONGOODS trademarks lack acquired distinctiveness or secondary meaning in relation to Opposer's goods and services.
10. Opposer's rights are narrow since UNCOMMON is used by numerous third parties in connection with clothing, consumer goods and online retail services.
11. As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the relevant consuming public in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.
12. Applicant reserves the right to rely on any and all further affirmative defenses that become available or arise during discovery in this matter, and reserves the rights to amend and supplement this Answer for the purposes of amending the above affirmative defenses and asserting other affirmative defenses.

WHEREFORE, Applicant denies that Opposer is entitled to any relief requested and further requests that the Board deny the Notice of Opposition and dismiss the opposition with prejudice.

Respectfully submitted,



September 20, 2022

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CERTIFICATE OF SERVICE

This is to certify that a true and complete copy of the foregoing **AMENDED ANSWER AND AFFIRMATIVE DEFENSES** has been served on Counsel for the Opposer by email to:

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September 20, 2022

Date

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