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

Proceeding no.	91278752
Party	Defendant Spark Energy, Inc.
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Submission	Answer
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Date	11/22/2022
Attachments	Answer and Affirmative Defenses to Notice of Opposition - 11.22.2022. pdf(116421 bytes )

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

In re: Application Serial Nos. 90785117 and 90785097  
For the Mark: VIA RENEWABLES

VIA TRANSPORTATION, INC.  Opposer,  v.  SPARK ENERGY, INC.,  Registrant.	Opposition No.: 91278752
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**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Spark Energy, Inc. (hereinafter “Applicant”), hereby answers the Notice of Opposition of Opposer, Via Transportation, Inc. (“Opposer”), as follows. All allegations not specifically admitted herein shall be deemed denied.

1. Applicant denies the allegations in the first, unnumbered paragraph of the Notice of Opposition except for the allegations stated in the last sentence of that paragraph.

2. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 1 of the Notice of Opposition, and therefore denies the same.

3. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 2 of the Notice of Opposition, and therefore denies the same.

4. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 3 of the Notice of Opposition, and therefore denies the same.

5. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 4 of the Notice of Opposition, and therefore denies the same.

6. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 5 of the Notice of Opposition, and therefore denies the same.

7. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 6 of the Notice of Opposition, and therefore denies the same.

8. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 7 of the Notice of Opposition, and therefore denies the same.

9. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 8 of the Notice of Opposition, and therefore denies the same.

10. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 9 of the Notice of Opposition, and therefore denies the same.

11. Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 10 of the Notice of Opposition, and therefore denies the same.

12. The allegations in paragraph 11 of the Notice of Opposition, contain legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations. Further answering, Applicant states that U.S. Registration Nos. 5,958,489 and 5,958,490 speak for themselves at this moment.

13. The allegations in paragraph 12 of the Notice of Opposition, contain legal conclusions to which no answer is required. To the extent an answer is required, Applicant is without sufficient knowledge or information to admit or deny the allegations stated in paragraph number 12.

14. The allegations in paragraph 13 of the Notice of Opposition, contain legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations.

15. The allegations in paragraph 14 of the Notice of Opposition, contain legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations.

16. The allegations in paragraph 15 of the Notice of Opposition, contain legal conclusions to which no answer is required. To the extent an answer is required, Applicant denies the allegations.

17. Applicant denies the allegations in paragraph 16 of the Notice of Opposition.

18. Applicant denies the allegations in paragraph 17 of the Notice of Opposition.

19. Applicant denies the allegations in paragraph 18 of the Notice of Opposition.

20. Applicant admits the allegations in paragraph 19 of the Notice of Opposition.

21. Applicant denies the allegations in paragraph 20 of the Notice of Opposition.

22. Applicant repeats and realleges its answers in its paragraphs 1 – 21 above as set forth herein.

23. Applicant denies the allegations in paragraph 22 of the Notice of Opposition.

24. Applicant denies the allegations in paragraph 23 of the Notice of Opposition.

25. Applicant denies the allegations in paragraph 24 of the Notice of Opposition.

26. Applicant denies the allegations in paragraph 25 of the Notice of Opposition.

27. Applicant denies the allegations in paragraph 26 of the Notice of Opposition.

28. Applicant denies the allegations in paragraph 27 of the Notice of Opposition.

29. Applicant denies and opposes the relief requested by Opposer in the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

30. No likelihood of confusion exists between Applicant's use of its VIA RENEWABLE trademarks and Opposer's use of the "VIA Mark" (as that term is defined by Opposer in its Notice of Opposition).

31. Opposer's claims are barred by the doctrine of unclean hands.

32. The requested relief is barred by the equitable doctrines of laches, estoppel, and acquiescence.

33. Third parties have used marks similar to the VIA Mark for similar or related goods and/or services, thus the VIA Mark is weak and entitled to a narrow scope of protection.

34. Opposer has failed to state a claim upon which relief can be granted.

35. Opposer has not and will not suffer any damage resulting from the registrations of Applicant's VIA RENEWABLES trademarks.

36. Opposer's claims fails to satisfy the standard for dilution as set forth in 15 U.S.C. § 1123 because its marks are not famous.

37. Applicant reserves the right to amend its Answer should discovery bring forth new facts and evidence upon which to assert additional affirmative defenses.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a U.S. federal trademark registration immediately issue to Applicant for its "VIA RENEWABLE" trademark applications, U.S. Serial Nos. mark, 90785117 and 90785097, and that the Trademark Trial and Appeal Board grant Applicant such other and further relief as it may deem just and proper.

Dated: November 22, 2022

Respectfully submitted,

**MARC J. KESTEN, P.L.**

By: /s/ Marc J. Kesten

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*Attorneys for Applicant, Spark Energy, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 22, 2022, I caused Applicant, Spark Energy, Inc.'s "ANSWER TO NOTICE OF OPPOSITION" to be electronically transmitted and served through the U.S. Trademark Trial and Appeals Board's electronic filing system at [esta.uspto.gov](http://esta.uspto.gov).

/s/ Marc J. Kesten

Marc J. Kesten