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ESTTA Tracking number: **ESTTA1252370**

Filing date: **12/06/2022**

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

Proceeding no.	91281446
Party	Defendant Bona Fide Live, Inc.
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Date	12/06/2022
Attachments	EXIT_IN Answer.pdf(235177 bytes)

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

MVNTN OWNER, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91/281446
	:	
BONA FIDE LIVE, INC.,	:	
	:	
Applicant.	:	

APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION

Applicant, Bona Fide Live, Inc. ("Applicant"), by its undersigned counsel, answers the Notice of Opposition of MVNTN Owner, LLC ("Opposer"), as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

2. Applicant admits that it operates the nightclub and music performance business under the mark EXIT/IN in a building leased from Opposer. Applicant denies that any alleged trademark license to the EXIT/IN mark from Opposer is valid. Applicant further denies that it does not own rights in the EXIT/IN mark. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 2 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

3. Admitted.

4. Admitted.

5. Applicant admits only that the EXIT/IN mark has developed considerable consumer recognition and value, but denies that such recognition and value inures to the benefit of the landlord to the real property on which Applicant's EXIT/IN business is operated, i.e. Opposer. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 5 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

6. Applicant admits only that Tennessee Trademark Registration 45092 is of record in the Tennessee Department of State. The registration speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same. Applicant denies that such registration creates any legal presumptions in favor of the registrant under Tennessee law. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

7. Applicant admits only that Tennessee Trademark Registration 45092 is of record in the Tennessee Department of State. The registration speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same.

8. Applicant admits only that Applicant has, to date, not challenged or sought to cancel Tennessee Registration No. 45092. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 8 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

9. Applicant admits only that US trademark application Serial Nos. 90801676, 90801683 and 90801740 and the file histories thereof are of record in the US Patent and Trademark Office as filed on June 29, 2021. The content of the documents comprising such

prosecution history speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same.

10. Tennessee Registration No. 45092 and US Application Serial No. 90801676 speak for themselves, and Applicant need not admit or deny Opposer's characterization of the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 12 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

14. Applicant admits that on September 1, 2011 Applicant's immediate predecessor in interest acquired the business conducted under the EXIT/IN mark from the previous owners of the EXIT/IN business and that it executed a lease with the landlord of the building. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 14 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 19 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

20. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

21. Applicant admits only that, in 2020, it entered into a lease for real property with the Opposer herein as landlord.

22. Applicant admits only that the website printout attached as Exhibit B purports to be a copy of an April 6, 2021 article captioned "Rolling Stone." Applicant denies that Exhibit B is a true and complete copy of such article. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 22 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

23. Applicant is without knowledge or information sufficient to form a belief as to

the truth or falsity of the allegations in Paragraph 23 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

24. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 24 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

25. Applicant admits only that Applicant filed Application Serial No. 90636889 in the US Patent and Trademark Office. Such application speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same. Applicant denies that such application was an effort to co-opt any legitimate right of Opposer. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 25 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

26. Application Serial No. 90636889 filed in the US Patent and Trademark Office speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same.

27. Applicant admits only that Applicant filed Application Serial No. 90671100 in the US Patent and Trademark Office. Such application speaks for itself, and Applicant need not admit or deny Opposer's characterization of the same. Applicant denies that such application was an effort to co-opt any legitimate right of Opposer. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 27 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

28. Application Serial Nos. 90671100 and 90636889 speak for themselves, and

Applicant need not admit or deny Opposer's characterization of the same. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 28 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

29. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 29 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

30. Applicant denies the allegation that it does not own rights in the marks of Application Serial Nos. 90671100 and 90636889. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 30 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

31. Applicant admits that its landlord, Opposer, has not consented to Application Serial Nos. 90671100 and 90636889, but denies that any such consent was needed. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 31 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

32. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 32 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

COUNT I

Priority and Likelihood of Confusion

33. Applicant realleges the preceding paragraphs of this Answer as though the same were fully set forth herein.

34. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 34 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

35. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 35 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

36. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 36 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

COUNT II

Lack of Ownership

37. Applicant realleges the preceding paragraphs of this Answer as though the same were fully set forth herein.

38. Applicant denies that it has not had and does not have ownership rights in the EXIT/IN mark and marks containing EXIT/IN. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in

Paragraph 38 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

39. Denied.

40. Applicant admits only that Exhibit C purports to be an online record of the Tennessee Secretary of State website pertaining to Applicant dated as of October 27, 2022. Applicant further admits that its assumed name has been and continues to be "Exit/In Nashville's Music Forum." Applicant denies that it has been dissolved, and further denies that its assumed name registration in Tennessee is inactive. The remaining allegations of Paragraph 40 constitute legal conclusions to which no answer is required.

COUNT III

Fraud on the United States Patent and Trademark Office

41. Applicant realleges the preceding paragraphs of this Answer as though the same were fully set forth herein.

42. Application Serial Nos. 90671100 and 90636889 speak for themselves, and Applicant need not admit or deny Opposer's characterization of the same.

43. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant further denies that Applicant has no ownership rights in EXIT/IN. Applicant further denies that Application Serial Nos. 90671100 and 90636889 are fraudulent.

44. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant further denies that it made false statements to the US Patent and Trademark Office in Application Serial Nos. 90671100 and 90636889. Applicant is without knowledge or information sufficient to form a belief as to the

truth or falsity of the remaining allegations in Paragraph 44 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

45. Applicant denies that it made knowingly false statements to the US Patent and Trademark Office in Application Serial Nos. 90671100 and 90636889. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 45 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

46. Applicant denies that it entered into any valid trademark license with its landlord, Opposer, for the EXIT/IN mark. Applicant further denies that it made materially false statements in Application Serial Nos. 90671100 and 90636889. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 46 of the Notice of Opposition, and so denies the same and leaves Opposer to its proof.

47. Denied.

AFFIRMATIVE DEFENSES

1. Opposer's claim is barred by the doctrine of unclean hands.

Opposer alleges in the Notice of Opposition that it purportedly obtained rights to the EXIT/IN mark from a prior landlord to the real property on which Applicant and its predecessors to the EXIT/IN business operated a nightclub and music and performance venue since 1971. On information and belief, the original owner of the EXIT/IN business, EXIT/IN, Inc., with which the EXIT/IN mark originated, filed for bankruptcy in 1975. On information and belief, all of the assets of the debtor associated with the EXIT/IN business, which would have included the EXIT/IN mark, were liquidated, and were acquired by the subsequent owner/operator of the business. On information and belief, the EXIT/IN business thereafter was operated substantially continuously by a series of owners,

most recently, Applicant.

On information and belief, Opposer possesses no trademark assignments other than the *June 30, 2021* assignment from Nash and Anthony Partnership to Opposer to support its sweeping allegation in the Notice of Opposition that it and each of the prior landlords to the real property on which the EXIT/IN business had been operated for more than 50 years owned the EXIT/IN mark. On information and belief, the building owned by Opposer would have relatively little value if the owner of the EXIT/IN business moved to a new location. On information and belief, Opposer accordingly either knew that the purported trademark assignment from Anthony and Nash Partnership and/or the Partnership's claim to rights in EXIT/IN were invalid or at least highly questionable, but it nonetheless obtained a document that could be used as a legal lever to ensure that the EXIT/IN business remained in the building they purchased, or Opposer negligently and recklessly failed to conduct proper and necessary diligence into the purported trademark rights assigned to it by the prior landlord. Opposer at no time controlled or participated in any way in Applicant's business under the EXIT/IN mark, and was solely landlord to the real property. Opposer's assertion of purported trademark rights in this proceeding is harassing and constitutes unclean hands. Accordingly, Opposer is barred from the relief it seeks.

2. Opposer's claims are barred by the equitable doctrine of estoppel.

Opposer's predecessor landlord, Anthony and Nash Partnership, entered into a lease agreement with Applicant's predecessor, JR Facility Management, LLC, the previous owner and operator of the EXIT/IN business. Such lease contains language Opposer alleges to be a license to the EXIT/IN mark from the Partnership to the tenant. On information and belief, Anthony and Nash Partnership was a mere landlord that did not control or participate in the operation of the EXIT/IN business of Applicant or Applicant's predecessor in any way. As such, on information and belief, Opposer and Anthony and Nash Partnership from whom Opposer purchased the real estate knew or should have known that they had no legitimate legal claim to ownership of the EXIT/IN mark under

which a series of owner/operators exclusively provided their entertainment and related services. Nonetheless, Applicant was required to enter into a lease agreement with Opposer containing an alleged trademark license from Opposer to Applicant for the EXIT/IN mark. Accordingly, Opposer is equitably estopped from asserting rights in the mark EXIT/IN in this proceeding based on the purported license in the lease agreements.

WHEREFORE, Applicant requests that Opposition 91/281446 be dismissed with prejudice, and that a registration issue to Applicant for the marks of Application Serial Nos. 90671100 and 90636889.

Respectfully submitted,

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Date: December 6, 2022

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ***Appicant's Answer to the Notice of Opposition*** was served via email pursuant to 37 CFR § 2.119(b) on the following:

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Dated: December 6, 2022

By: /KAKepchar/
Karol A. Kepchar, Esq.