

ESTTA Tracking number: **ESTTA1329457**Filing date: **12/19/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91288184
Party	Defendant Brooklyn Nets, LLC
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Date	12/19/2023
Attachments	Answer to Phinge Notice of Opposition 91288184.pdf(27133 bytes)

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

In the Matter of Trademark Application:

Serial No.: 97/226,848
Applicant: Brooklyn Nets, LLC
Mark: NETAVERSE
Filed: January 19, 2022
Published in the *Official Gazette*: July 18, 2023

PHINGE CORPORATION,

Opposer,

- *against* -

BROOKLYN NETS, LLC,

Applicant.

Opposition No.: 91288184

ANSWER

Applicant Brooklyn Nets, LLC (“Applicant”), through its undersigned counsel, hereby answers opposer Phinge Corporation’s (“Opposer”) Notice of Opposition (“Notice”) as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Notice and therefore denies them, except that as the Notice admits that Applicant is not yet using “Netaverse” in commerce, Applicant denies such allegations pertaining to the term “Netaverse.”

2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Notice and therefore denies them, except Applicant does not dispute Opposer’s admission that it is not making use in commerce of the term “Netaverse.”

3. Applicant denies the allegation in paragraph 3 that Applicant’s clothing and apparel

associated with the NETS® basketball team will create confusion with whatever goods or services Applicant may ultimately offer from the list in its asserted application. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 3 of the Notice and therefore denies them.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 of the Notice and therefore denies them.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Notice and therefore denies them.

6. Applicant denies that Opposer has common law rights in the term “NETAVERSE” because Opposer admits repeatedly in its Notice that it has never used the term in commerce. Applicant refers to the records of the USPTO for an accurate statement of the record Opposer cites in paragraph 6 of the Notice and further refers to the abandonment of one of the applications for NETVERSE (Serial No. 88/630,242), containing a similar broad scope of “thousands of uses,” on the date of the filing of the Notice. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 6 of the Notice and therefore denies them.

7. Applicant denies that Opposer has common law rights in the term “NETAVERSE” because Opposer admits repeatedly in its Notice that it has never used the term in commerce. Applicant refers to the records of the USPTO for an accurate statement of the record Opposer cites in paragraph 7 of the Notice. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 7 of the Notice and therefore denies them.

8. The allegations contained in paragraph 8 of the Notice contain legal conclusions as

to which no response is required, but to the extent a response is required, Applicant denies them, except Applicant admits that it filed the application at issue on January 19, 2022, a day after it filed an application for NETAVERSE for basketball-related services and before Opposer filed its NETAVERSE application.

9. The allegations contained in paragraph 9 of the Notice contain legal conclusions as to which no response is required, but to the extent a response is required, Applicant does not dispute that the opposition is timely.

10. The allegations contained in paragraph 10 of the Notice contain legal conclusions as to which no response is required, and Applicant refers to the records of the USPTO for an accurate statement of the filing dates of any referenced applications or registrations. To the extent any further response is required, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 of the Notice and therefore denies them.

11. Paragraph 11 is a restatement of Opposer's allegations, and Applicant responds to any such restatement by incorporating its responses stated above.

12. Applicant admits that both applications concern the term "NETAVERSE" but otherwise states that the allegations contained in paragraph 12 of the Notice contain legal conclusions as to which no response is required, and to the extent a response is required, Applicant denies them.

13. Applicant admits that the list contained in paragraph 13 of the Notice reflects the scope of the application at issue but otherwise denies the allegations contained in paragraph 13 of the Notice.

14. Applicant denies the allegations contained in paragraph 14 of the Notice.

15. Applicant denies the allegations contained in paragraph 15 of the Notice.

16. Applicant denies the allegations contained in paragraph 16 of the Notice.

17. Applicant admits that Opposer sent Applicant a letter to notify Applicant of Opposer's claims regarding Applicant's use and applications commencing as of mid-January 2022, and avers that Applicant responded to such letter on March 8, 2022 to note the lack of merit in Opposer's letter. Applicant continues to deny that the claims in such letter have basis or merit.

18. Applicant admits that Opposer has no control over Applicant's goods and denies the remaining allegations contained in paragraph 18 of the Notice.

19. Applicant denies the allegations contained in paragraph 19 of the Notice.

20. Applicant denies the allegations contained in paragraph 20 of the Notice.

21. The allegations in paragraph 21 of the Notice contain certain legal assertions as to which no response is required, but to the extent any response is required, Applicant denies the allegations contained in paragraph 21 of the Notice and the unnumbered paragraph that follows.

AFFIRMATIVE DEFENSES

Without waiving or excusing Opposer's burden of proof or admitting that Applicant has any burden of proof, Applicant asserts the following affirmative defenses as to the Notice.

FIRST AFFIRMATIVE DEFENSE

1. Opposer has previously stated that the mark NET-VERSE can coexist with Opposer's NETVERSE mark for essentially identical services, and Opposer has applied for registration of and otherwise prosecuted its application for the term NETAVERSE with respect to a wide swath of goods and services notwithstanding its awareness of Applicant's prior NETAVERSE application in Class 41 (Serial No. 97/224,598). Therefore, Opposer is estopped from arguing that Applicant's mark cannot register based on the claimed rights that Opposer asserts in the Notice.

SECOND AFFIRMATIVE DEFENSE

2. Just like with its broad NETVERSE application that it recently abandoned (Serial No. 88/630,242), Opposer does not have a bona fide intent to use all of the goods and services in its asserted NETAVERSE application, nor is it making use of NETVERSE other than for smartphones, tablets, and rewards programs. Further, on information and belief, Opposer became aware of Applicant’s use of NETAVERSE, which dates to January 15, 2022, before Opposer filed its asserted trademark application for NETAVERSE on January 18, 2022, and Opposer filed the application in order to try to block Applicant’s protection of its prior rights. Accordingly, Opposer’s Notice is barred by the doctrine of unclean hands.

RESERVATION OF RIGHTS

Applicant does not presently know all the facts and circumstances respecting Opposer’s Notice and reserves the right to amend this Answer should Applicant later discover facts demonstrating the existence of additional affirmative defenses.

WHEREFORE, Applicant requests that the Board dismiss the Notice of Opposition.

DATED: New York, New York
December 19, 2023

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CERTIFICATE OF SERVICE

I, Eleanor M. Lackman, hereby certify that a true and correct copy of the foregoing Answer was served on Opposer by emailing said copy on December 19, 2023 to the following:

Robert C. DeMaio
President and C.E.O.
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By: /Eleanor M. Lackman/
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