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

Proceeding no.	91294065
Party	Defendant Noticed LLC
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Date	10/30/2024
Attachments	Answer to NOP - UN_COMMON.pdf(124192 bytes)

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

**Uncommon Creative Studio Holding
Limited,**
Opposer

**Opposition No. 91294065
Serial No. 98129000**

Noticed LLC,
Applicant / Respondent

**Mark: UN/COMMON
Filing Date: Aug 11, 2023**

ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENCES

Applicant, Noticed LLC (“Applicant”), by its undersigned counsel, hereby answers the Notice of Opposition filed by Uncommon Creative Studio Holding Limited (“Opposer”), as follows:

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

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, Applicant denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and, therefore, Applicant denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and, therefore, Applicant denies the same.

4. Applicant admits that the TSDR records attached as Exhibit A to the Notice of Opposition list Uncommon Creative Studio Holding Limited as the owner of the trademark application identified in Paragraph 4. Other than as previously admitted, Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 4 of the Notice of Opposition, and therefore Applicant denies the same.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and, therefore, Applicant denies the same.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and, therefore, Applicant denies the same.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and, therefore, Applicant denies the same.
8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and, therefore, Applicant denies the same.
9. Applicant admits only that August 11, 2023 is the filing date of the U.S. Trademark Application Number 98129000. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 9 of the Notice of Opposition, and therefore Applicant denies the same.
10. Applicant admits the allegations in Paragraph 10 of the Notice of Opposition.
11. Applicant admits the allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Notice of Opposition and, therefore, Applicant denies the same.
13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and, therefore, Applicant denies the same.
14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Notice of Opposition and, therefore, Applicant denies the same.
15. Applicant hereby repeats and re-alleges the admissions and denials contained in its answers to Paragraphs 1 through 14 of the Notice of Opposition.
16. Applicant admits only that August 11, 2023 is the filing date of the U.S. Trademark Application Serial Number 98129000. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 16 of the Notice of Opposition, and therefore Applicant denies the same.
17. Applicant denies the allegations set forth in Paragraph 17 of the Notice of Opposition.

Applicant denies the allegations set forth in the unnumbered conclusory Paragraph of the Notice of Opposition, and thereby denies that Opposer is entitled to any relief requested therein.

AFFIRMATIVE DEFENCES

By asserting the following affirmative defences, Applicant does not concede that it bears the burden of proof or persuasion for any of the defences or issues raised therein.

Applicant reserves its right to amend its Answer to modify the following defences or raise any additional defence not asserted herein of which it becomes aware hereafter through discovery or investigation.

Subject to the foregoing, Applicant states as follows:

18. Opposer's claims are barred, in whole or in part, because the Opposer fails to state a claim upon which relief can be granted.
19. Opposer's claims are barred, in whole or in part, because the Opposer lacks standing since Applicant's services are not at all related or within the same channels of trade as those of the Opposer's services. Furthermore, the Opposer's claims are barred, in whole or in part, because the Opposer has made extremely broad allegations, failed to identify any specific services, and not provided any materials to show the use of its mark in commerce in the United States for any of its alleged services, particularly for Class 35.
20. Opposer's claims are barred, in whole or in part, because the Opposer fails to clearly provide a basis for claiming priority through use of their mark in commerce in the United States prior to the Applicant's date of filing the US Trademark Application Serial Number 98129000. The Opposer has filed the US Trademark Application Serial Number, under §44(e) of the Trademark Act; that is, on the basis of "ownership of a registration of the mark in the applicant's country of origin" (*See 37 C.F.R. §2.34 and TMEP §806*). The Opposer has not additionally claimed any other filing basis, especially, §1(a) of the Trademark Act (use of a mark in commerce). Therefore, priority on the basis of use in commerce as claimed by the Opposer, on the basis of common law rights, or otherwise, are barred in whole or in part.
21. Opposer's claims are barred, in whole or in part, because Opposer's Notice of Opposition with respect to Opposer's own mark is too broad in light of third-party commercial uses in other industries both similar to and outside of Opposer's classes. Indeed, numerous third-party trademark registrations and commercial products using

the name/word “UNCOMMON” exist, both prior to and concurrently with Opposer’s mark. Accordingly, Opposer’s mark is neither famous nor sufficiently distinctive, including to distinguish from these third-party uses.

22. Opposer’s alleged claim of likelihood of confusion is barred because Opposer has failed to claim priority for any of its services, especially those alleged to be similar/identical to the services provided by the Applicant. The Applicant reiterates, however, that the services associated with its mark are not related to those provided by the Opposer. As such, Opposer cannot claim that its consumers are likely to be confused, mistaken or deceived into believing that the products and/or services of the Applicant originate with or are otherwise associated with Opposer.
23. There is no likelihood of confusion between Applicant’s mark and Opposer’s mark, the number of third-party uses of the same mark in close proximity to Opposer’s mark and resulting lack of fame for any of Opposer’s marks, lack of any actual confusion especially in light of the duration of concurrent use by numerous third parties, the variety of third party products on which the same or similar worded mark is used, the inability and/or failure of Opposer to exclude other third parties from use of the same or similar worded marks including on products similar and/or closely related to Opposer’s goods, and the lack of any potential for confusion in light of any and all of the foregoing.
24. In light of the foregoing, Opposer’s claims are barred, in whole or in part, because Opposer would not reasonably and approximately be damaged by registration of Applicant’s mark and has no direct and personal stake in the outcome of this opposition, and has filed the said opposition in bad faith, for the purpose of securing registration of their US Trademark Application No. 98290039, which was filed on November 29, 2023, that is more than three months later than the Applicant’s filing date.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice, and that Applicant’s U.S. Application Serial No. 98129000 proceed to

registration on the Principal Register, and grant such other and further relief as the Board deems just and proper.

DATED this 30th day of October 2024.

Respectfully submitted,

/s/ Ana Juneja /

Ana Juneja
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Applicant's Answer to Notice of Opposition and Affirmative Defences was sent electronically on November 30, 2024 to the Opposer's attorney at:

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DATED this 30th day of October 2024.

Respectfully submitted,

/s/ Ana Juneja /

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