


ESTTA Tracking number: **ESTTA307179**

Filing date: **09/21/2009**

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

Proceeding	92051339
Party	Defendant Ned C. Bowers
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Submission	Answer
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Date	09/21/2009
Attachments	Answer and Affirmative Defenses (092109).pdf ( 5 pages )(158275 bytes )

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR TRADEMARKS - <http://estta.uspto.gov/filing-type.jsp>

BY: 

DATE: 9/21/09

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

In the Matter of Registration No. 3,611,100  
Date of Registration: April 28, 2009

_____	)	
Jeremy Summers	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Opposition No.: 92051339
Ned C. Bowers	)	
	)	
Respondent.	)	
_____	)	

To: Box TTAB FEE  
Honorable Commissioner for Trademarks  
P.O. Box 1451  
Arlington, Virginia 22313-1415

**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES TO PETITIONER'S  
PETITION FOR CANCELLATION OF RESPONDENT'S ZLOC TRADEMARK**

Ned C. Bowers ("Respondent"), hereby files his Answer to Jeremy Summers' ("Petitioner")  
Petition for Cancellation of Respondent's trademark registration for ZLOC (Registration  
No.3,611,100) and states the following:

1. Admitted.

2. Admitted that Respondent filed the Application on February 21, 2008 and that the Application was filed based on Respondent's first use of the trademark on March 1, 1993.

3. Without knowledge as to whether Petitioner is the President of Milspec Products, Inc. and therefore denied. Admitted that Milspec Products, Inc. was formed in 1993 and that the company Milspec Products, Inc., sells standard and custom fasteners to the aviation and motorsports industries. Denied that Petitioner is "well known" in the industry and denied that Petitioner has been selling such fasteners throughout the United States since July 29, 1993.

4. Denied that Applicant was a partner in Opposer's business. Applicant was part owner and a shareholder of Milspec Products, Inc., which is a business that was created by Applicant and Opposer to be a contract provider for Applicant's business, Skybolt Aeromotive Corporation. Denied that Applicant was involved in the business until the year 2000 as Applicant was only involved until 1999. Admitted that Applicant purchased all of Opposer's stock and interest in Milspec Products, Inc., but denied that Applicant purchased all intellectual property rights owned by Applicant at the time.

5. Without knowledge as to the authenticity of the document and therefore denied. Admitted that Exhibit "B" to Petitioner's Petition for Cancellation purports to be a printout from the [www.archive.org](http://www.archive.org) website, which shows Respondent's use of the ZLOC mark in May of 2000. Denied that Applicant did not begin using the mark until May of 2000 as Applicant began using the mark in 1993. Denied that a printout from [www.archive.org](http://www.archive.org) is probative evidence of use especially when Respondent's use dates back to 1993 and Respondent did not even have a website at that time.

6. Denied.

7. Without knowledge as to the licensing arrangement with Milspec Products, Inc., and therefore denied. Admitted that Respondent has had knowledge of Petitioner's unauthorized

use, through Milspec Products, Inc. of the Z-LOCK trademark in conjunction with fasteners. Denied that because of Respondent's knowledge that somehow implies that Respondent allowed or approved of such use. Respondent has sent numerous cease and desist letters related to Petitioner's unauthorized use of the subject marks over the years and attempted to litigate the case in 2000-2001, but was forced to re-think litigation because of the effect that September 11, 2001 had on Respondent's business.

8. Denied.

9. Denied. Respondent can provide evidence of its first use dating back to March 1, 1993.

10. Denied.

WHEREFORE, Respondent prays that the Petitioner's Petition for Cancellation be dismissed and Respondent's trademark Registration be maintained.

#### **Affirmative Defenses**

1. As a first affirmative defense, Petitioner has failed to state a claim upon which relief can be granted.

2. As a second affirmative defense, Respondent was the first to use the ZLOC trademark in commerce, which was prior to going into business with Petitioner.. At no time did Respondent transfer his intellectual property rights in any trademarks, copyrights, patents or trade secrets to Petitioner. Instead, when Respondent and Petitioner terminated their business relationship in 1999, not the year 2000, Respondent retained ownership of any and all intellectual property including, but not limited to the ZLOC trademark.

3. As a third affirmative defense, if Petitioner was ever allowed to use Z-LOCK, ZLOC, or something confusingly similar thereto it was a limited license to use the mark during the timeframe that Respondent and Petitioner were in business together. Once Respondent ceased doing business with Petitioner, any rights Petitioner may have had with respect to the Z-LOCK or ZLOC trademarks were terminated.

4. As a fourth affirmative defense, Petitioner has brought this suit with unclean hands. Petitioner has a documented history of copying Respondent's business, products, marks, and slogans. This Opposition has no real basis in fact and was brought in bad faith.

5. As a fifth affirmative defense, Petitioner lacks the requisite standing to file this Petition for Cancellation.

6. As a sixth affirmative defense, Petitioner fraudulently filed this Petition as well as a trademark application for Z-LOCK on the same day knowing that Respondent has prior rights in the ZLOC trademark.

Dated this 21<sup>st</sup> day of September, 2009.

Respectfully submitted,

By: 

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was mailed to Respondent on this 21<sup>st</sup> day of September, 2009, by first class mail, postage prepaid, at the following address:

Edward M. Livingston, Esq.  
The Livingston Firm  
963 Trail Terrace Drive  
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