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

Proceeding	92073304
Party	Defendant Xiaoxin Chen
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

CRICUT, INC.,

Petitioner,

v.

XIAOXIN CHEN,

Respondent.

Cancellation No. 92073304

Registration Nos. 5920511; 5920512

ANSWER OF RESPONDENT

Respondent Xiaoxin Chen (“Respondent”), by and through its attorney, hereby answers the numbered paragraphs of the Petition for Cancellation filed by Cricut, Inc., (“Petitioner”) as follows:

1. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 1 is denied.

2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 2 is denied.

3. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 3 is denied.

4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 4 is denied.

5. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 5 is denied.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 6 is denied.

7. Respondent admits that Petitioner is the owner of certain U.S. trademark application and registrations. Except as so admitted, the remaining allegations in Paragraph 7 are denied.

8. Admitted.

9. Admitted.

10. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Petition for Cancellation. To the extent a response is required, the statement of Paragraph 10 is denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.

AFFIRMATIVE DEFENSES

Respondent further defends by asserting the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE Failure to State a Claim

The Petition for Cancellation fails to state a claim upon which relief may be granted as the NICAPA EASYPRESS and CRICUT EASYPRESS marks are visually and phonetically different when viewed in their entirety, and confusion among consumers is unlikely.

SECOND AFFIRMATIVE DEFENSE Lack of Similarity of the Marks

There is no likelihood of confusion between Respondent's mark and Petitioner's mark when considered in their entireties. Section 1207.01(b) of the Trademark Manual of Examining Procedure ("TMEP") states that "[t]he basic principle in determining confusion between marks is that marks must be compared in their entireties." *Id.*, citing *In re Nat'l Data Corp.*, 224 U.S.P.Q. 749, 750-51 (Fed. Cir. 1985). Therefore, "likelihood of the confusion cannot be predicated on dissection of a mark, that is, on only part of the mark." *Id.* Rather, the likelihood of confusion analysis requires that the similarity or dissimilarity of the marks be examined "in their entireties as to appearance, sound, connotation and commercial impression." *Id.* quoting *In re E.I. du Pont de Nemours & Co.*, 177 U.S.P. 563, 567 (C.C.P.A. 1973). In this case, Respondent's mark is different from Petitioner's mark in appearance, sound, connotation and commercial impression.

As shown below, Respondent's mark contains an additional word, NICAPA, that precedes the word EASYPRESS, which is descriptive of the heat press products carrying the marks. Thus, there are stark visual differences between the marks.

NICAPA EASYPRESS

Respondent's Mark

CRICUT EASYPRESS & EASYPRESS

Petitioner's Marks

Further, because of this additional word, Respondent's mark differs in sound from Petitioner's mark. Respondent's NICAPA EASYPRESS mark contains two additional syllables than Petitioner's EASYPRESS mark does. Also, Respondent's mark differs in connotation from Petitioner's mark. The additional word NICAPA in Respondent's mark gives it an entirely different idea or feeling from Petitioner's mark. Furthermore, because Respondent's mark has the word NICAPA preceding the word EASYPRESS, it has a different commercial impression than Petitioner's mark. Respondent's mark is associated with NICAPA, while Petitioner's mark EASYPRESS lacks a preceding word, and thus consumers only associate this word with the descriptive meaning of the heat press products using the mark.

Further, while “[l]ikelihood of confusion is not necessarily avoided between otherwise confusingly similar marks merely by adding or deleting a house mark, ... additions or deletions to marks may be sufficient to avoid a likelihood of confusion if... the matter common to the marks is diluted” or highly suggestive. TMEP § 1207.01(b)(iii). This principle is well settled. *See, e.g., Bass Pro Trademarks, L.L.C. v. Sportsman's Warehouse, Inc.*, 89 U.S.P.Q. 2d 1844, 1857-58 (T.T.A.B. 2008) (finding that, although cancellation petitioner's and respondent's marks were similar by virtue of the shared descriptive wording SPORTSMAN WAREHOUSE, this similarity

outweighed by differences in the terms of sound, appearance, connotation, and commercial impression created by other matter and stylization in the respective marks); *Wooster Brush Co. v. Prager Brush Co.*, 231 U.S.P.Q. 316, 318 (T.T.A.B. 1986) (holding no likelihood of confusion between POLY PRO and POLY FLO for paint brushes because POLY is highly suggestive of products made of polyester or polymers); *Stouffer Corp. v. Health Valley Natural Foods, Inc.*, 1 U.S.P.Q. 2d 1900 (T.T.A.B. 1986) (holding no likelihood of confusion between LEAN CUISINE and LEAN LIVING for food products because LEAN is at least highly suggestive of low fat food or perhaps of the desired result of eating low calorie foods); *Land-O-Nod Co. v. Paulison*, 220 U.S.P.Q. 61, 66 (T.T.A.B. 1983) (holding no likelihood of confusion between CHIROPRACTIC and CHIROMATIC for mattresses and box springs because CHIRO is highly suggestive of healthful support).

Here, the only word shared by the marks is EASYPRESS. In connection with the goods at issue, the word “easy press” is a more descriptive term for some designated products. In accordance with the precedent above, therefore the presence of NICAPA in Respondent’s mark is a significant difference between the marks and sufficient to avoid confusion when, as is proper, the marks are compared in their entireties.

Nevertheless, even though marks must be compared in their entireties, it is well established that “consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark.” See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 U.S.P.Q. 2d 1689, 1692 (Fed. Cir. 2005). The fact that NICAPA is the first word in Respondent’s mark—and hence the word that consumers are more likely to focus upon—further makes confusion unlikely.

Further, contrary to Petitioner's allegation, the word NICAPA, not EASYPRESS, is the dominant portion of the NICAPA EASYPRESS mark. Respondent owns two U.S. registrations for its NICAPA EASYPRESS marks and has used its mark in commerce for a number of different products associated with the registrations. Therefore, on seeing Respondent's mark NICAPA EASYPRESS, consumers are likely to assume that it is yet another mark in the NICAPA family, rather than mistakenly assuming a connection with Petitioner's EASYPRESS mark.

Respondent reserves the right to amend its answer to add affirmative defenses as may become necessary after a reasonable opportunity to conduct appropriate discovery.

PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully prays that the Board:

1. Dismiss the Petition for Cancellation in its entirety with prejudice;
2. Refuse registration of the Petitioner's Application Serial No. 88,715,017;
3. Grant Respondent such other and further relief as the Board deems just and proper.

DATED March 11, 2020.

Respectfully submitted,

By: /s/ Timothy T. Wang
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ATTORNEY FOR RESPONDENT
XIAOXIN CHEN

CERTIFICATE OF TRANSMISSION

I hereby certify that on the 11th day of March 2020, that the foregoing **ANSWER OF RESPONDENT** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/>.

By: /s/ Timothy T. Wang
Timothy T. Wang

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER OF RESPONDENT** has been served upon Paul Reilly and colleagues by forwarding said copy on the 11th day of March 2020 via email to the email addresses on file for Petitioner: paul.reilly@bakerbotts.com; tyler.beas@bakerbotts.com; john.mitchell@bakerbotts.com; cecily.porterfield@bakerbotts.com; nytmdpt@bakerbotts.com.

By: /s/ Timothy T. Wang
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