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

Proceeding	91243302
Party	Defendant National Women's Soccer League, LLC
Correspondence Address	MICHAEL A. PARKS THOMPSON COBURN LLP 55 EAST MONROE STREET, 37TH FLOOR CHICAGO, IL 60603 ipdocket@thompsoncoburn.com no phone number provided
Submission	Answer
Filer's Name	Cameron Hancock
Filer's email	chancock@kmclaw.com, jrupp@kmclaw.com, jburton@kmclaw.com, sglenden- ing@kmclaw.com, hmills@kmclaw.com, dolson@kmclaw.com
Signature	/Cameron Hancock/
Date	10/08/2018
Attachments	Royals TTAB Answer 1.pdf(319671 bytes)

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

Marks: UTAH ROYALS FC and UTAH ROYALS FC and Design
Serial Nos.: 87704565, 87704569, 87704696 and 8704706
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<p>KANSAS CITY ROYALS BASEBALL CORPORATION,</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>NATIONAL WOMEN’S SOCCER LEAGUE, LLC</p> <p style="text-align:center">Applicant.</p>	<p style="text-align:center">Opposition No.: 91243302</p> <p style="text-align:center">ANSWER</p>
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Applicant National Women’s Soccer League, LLC (“Applicant” or “Women’s Soccer”), by and through undersigned counsel, for its Answer to Opposer Kansas City Royals Baseball Corporation’s (“Opposer” or “Major League Baseball”) Consolidated Notice of Opposition (1TTABVUE, the “Opposition”) states that there is no likelihood of confusion between the asserted Major League Baseball marks and Applicant’s challenged marks associated with Women’s Soccer, that Major League Baseball has not and will not be damaged by registration of Applicant’s challenged marks, that the Opposition constitutes a broad overreach by Major League Baseball to interfere with and stifle Women’s Soccer and professional female sports leagues in general, and otherwise states as follows:

1. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 1 of the Opposition and, therefore, denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 2 of the Opposition and, therefore, denies the same.

3. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 3 of the Opposition and, therefore, denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 4 of the Opposition and, therefore, denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 5 of the Opposition and, therefore, denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 6 of the Opposition and, therefore, denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 7 of the Opposition and, therefore, denies the same.

8. Applicant admits solely that Women's Soccer is a professional women's soccer league founded in 2013 with eight (8) initial women's teams, one of which was FC Kansas City, the winner of championships in 2014 and 2015. All other allegations in Paragraph 8 of the Opposition are denied.

9. Applicant denies the allegations in Paragraph 9 of the Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Opposition.

11. Applicant admits solely that in 2017, Women's Soccer—a team operator, not a franchisor—redeemed the membership interests of FC Kansas City when FC Kansas City ceased operations, thus reducing the total number of teams in Women's Soccer by one (1). Applicant further admits solely that, irrespective of and without transferring any of FC Kansas City's former championships, assets, liabilities or other awards or recognition, Applicant subsequently provided distinct and new interests for an unrelated Women's Soccer league team to be

established in Salt Lake City, Utah (the “Utah Royals FC”). Applicant further admits solely that Women’s Soccer subsequently transferred players on the former FC Kansas City roster to the Utah Royals FC roster in order to keep the players together and to avoid a dispersal draft. All other allegations in Paragraph 11 of the Opposition are denied.

12. Applicant admits solely that a phone call took place between counsel for Applicant and counsel for Opposer, respectively, in late 2017. All other allegations in Paragraph 12 of the Opposition are denied.

13. Applicant admits solely that follow up correspondence occurred among counsel for the parties *circa* late 2017. All other allegations in Paragraph 13 of the Opposition are denied.

14. Applicant admits solely that, on December 1, 2017, Applicant filed United States Trademark Application Nos. 87704565, 87704569, 87704696 and 8704706 (collectively, the “Applications”) with the United States Patent and Trademark Office (“USPTO”), the Trademark Status & Document Retrieval (“TSDR”) records of which are publicly available and speak for themselves. All other allegations in Paragraph 14 of the Opposition are denied.

15. Applicant admits solely that, on December 1, 2017, Applicant publicly announced the Utah Royals FC team name and unveiled the team logo that is the subject of Applicant’s Applications, the TSDR records of which are publicly available and speak for themselves. All other allegations in Paragraph 15 of the Opposition are denied.

16. Applicant denies the allegations of Paragraph 16 of the Opposition.

17. Applicant admits the allegations of Paragraph 17 of the Opposition.

18. Applicant denies the allegations of Paragraph 18 of the Opposition.

19. Applicant admits solely that the TSDR records for Applicant’s Applications, as well as Opposer’s alleged registrations and applications,¹ are publicly available and speak for themselves. All other allegations in Paragraph 19 of the Opposition are denied.

¹ See 1TTABVUE at ¶ 5 (purportedly listing Opposer’s alleged registrations and applications).

20. Applicant admits solely that the TSDR records for Applicant's Applications, as well as Opposer's alleged registrations and applications, are publicly available and speak for themselves. All other allegations in Paragraph 20 of the Opposition are denied.

21. Applicant denies the allegations of Paragraph 21 of the Opposition.

22. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the first sentence of Paragraph 22 of the Opposition and, therefore, denies the same. Applicant denies the allegations in the second sentence of Paragraph 22 of the Opposition.

Except as expressly and explicitly admitted here, Applicant denies all other allegations, whether explicit or implied, in the Opposition.

AFFIRMATIVE DEFENSES

Applicant also asserts the following additional affirmative defenses to Opposer's Opposition and to the relief requested therein without assuming the burden of proof:

First Affirmative Defense

Opposer cannot prevail as the Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Opposer cannot prevail where the goods and services involved in Applicant's Applications are clearly different from the goods and services associated with Opposer's alleged registrations and applications.

Third Affirmative Defense

Opposer's claim for relief is barred by the doctrine of laches inasmuch as Major League Baseball has long been aware of Women's Soccer in general and the Utah Royals FC in particular, but failed to timely take any proactive steps concerning the Utah Royals FC name or marks from the outset. Instead, Major League Baseball waited until Women's Soccer and its members had invested significant resources into advertising, marketing, promoting and

establishing the Utah Royals FC name and marks, and the goodwill associated therewith, only to now collaterally attack the Utah Royals FC marks after-the-fact following the USPTO's publication of Women's Soccer's Applications. Major League Baseball's claim for relief is barred by Major League Baseball's deliberate decision to sit on its alleged rights.

Fourth Affirmative Defense

Opposer's claim for relief is barred by the related doctrines of acquiescence and/or waiver inasmuch as Major League Baseball has long been aware of Women's Soccer in general and the Utah Royals FC in particular but failed to timely take any proactive steps concerning the Utah Royals FC name or marks from the outset. Instead, via silence and inaction, Major League Baseball acquiesced in Women's Soccer's and its members' heavy investment of resources into advertising, marketing, promoting and establishing the Utah Royals FC name and marks, and the goodwill associated therewith, only to now collaterally attack the Utah Royals FC marks after-the-fact following the USPTO's publication of Women's Soccer's Applications. Indeed, even now, save for attempting to thwart Women's Soccer's Applications, Major League Baseball has and continues to acquiesce in Women's Soccer's use of the subject marks and Women's Soccer's continued investment therein.

Fifth Affirmative Defense

Opposer cannot prevail where there is no evidence of actual confusion and no likelihood of confusion where the channels of trade are different, the goods and services are different, the respective marks, when considered in their entirety, are different, the prototypical consumers are different, there exist a number of similar marks for similar or related goods or services in the marketplace, and so forth.

Sixth Affirmative Defense

For reasons similar to those set forth in relation to Major League Baseball's laches, acquiescence and/or waiver, Opposer's claim for relief is barred by the doctrine of equitable estoppel.

Seventh Affirmative Defense

Opposer's claim for relief is barred by the doctrine of unclean hands. Specifically, without any evidence that Women's Soccer's Applications will actually damage Major League Baseball in anyway, or otherwise create a likelihood of confusion, dilution or blurring relative to Major League Baseball's asserted marks, Major League Baseball has filed the instant Opposition for the ulterior purpose of demoralizing Women's Soccer and stifling professional female sports leagues in general. This is particularly apparent where a number of third parties have registered and are using ROYALS in relation to a wide variety of goods and services and Major League Baseball has neither opposed nor sought to cancel any such marks but has instead targeted Women's Soccer.

Eighth Affirmative Defense and Amplification of Denials

Applicant asserts that it possesses additional defenses, which it has yet to identify in this proceeding. Applicant reserves the right to amend its answer and assert these defenses as they are identified in the course of discovery in this proceeding. Regardless, Applicant sets forth the following affirmative pleadings in order to amplify its denials, the affirmative defenses set forth above, and Applicant's other defenses:

1. Women's Soccer, established in 2012 with only eight (8) initial teams, is a relatively young and developing professional women's soccer league seeking to facilitate the advancement and recognition of female athletes and soccer players among the consuming public.

2. Women's Soccer is a limited liability company that owns and operates the National Women's Soccer League.

3. At inception, the league included, among others, the FC Kansas City team.

4. However, in late 2017, Women's Soccer redeemed the membership interests of FC Kansas City and the operations of FC Kansas City ceased entirely, leaving FC Kansas City's entire roster of players without a team, and therefore without jobs.

5. As part of its ongoing effort to expand the advancement and recognition of female athletes and soccer players among the consuming public, Women's Soccer provided new and

distinct interests in a new league team in Salt Lake City, Utah, which ultimately became the Utah Royals FC.

6. The Utah Royals FC and its ownership are closely affiliated with its sister teams, Real Salt Lake, founded in 2005, and the Real Monarchs, founded in 2014. The Spanish word “real” translates to “royal” in English and Real Salt Lake and the Real Monarchs have both utilized the word “real” along with royal symbols and icons, such as lions, crowns, royal crests, and so forth, from inception.

7. The name and marks associated with the Utah Royals FC were explicitly chosen to align Utah Royals FC with Real Salt Lake and the Real Monarchs and to link or associate all three teams in the minds of the consuming public.

8. While taking over FC Kansas City’s player roster so as to keep the players together and avoid a dispersal draft in close chronological proximity to the college draft, the Utah Royals FC did not replace or otherwise acquire any of the interests, rights, assets, championships, awards, liabilities, or other awards or recognition of FC Kansas City.

9. The Utah Royals FC is not affiliated with or linked in any way to the former FC Kansas City team; the Utah Royals FC is not the successor of FC Kansas City.

10. Despite Real Salt Lake’s use of the word “real” in association with images of a lion, crown, and a mascot known as Leo the Lion since 2005, as well as similar uses by the Real Monarchs since 2014, Major League Baseball has never suggested a likelihood of confusion or otherwise sought to challenge such use in some thirteen (13) years.

11. Notably, a number of additional third parties have registered and used the word “royals” in association with a number of goods and services for many years and Major League Baseball has permitted such uses without complaint.

12. Likewise, it is common among sporting leagues, whether college or professional, for two teams to have similar or identical mascots and names without confusion, including, for example, the San Francisco Giants (MLB) and the New York Giants (NFL), the New York Rangers (NHL) the Texas Rangers (MLB) and the Swope Park Rangers (USL), the Saint Louis

Cardinals (MLB) and the Arizona Cardinals (NFL), the Sacramento Kings (NBA) and the Los Angeles Kings (NHL), the New York Jets (NFL) and the Winnipeg Jets (NHL), the Carolina Panthers (NFL) and the Florida Panthers (NHL), and so forth.

13. Following creation of Utah Royals FC, which Major League Baseball knew about from the outset, Applicant invested significant resources into advertising, marketing, promoting, and establishing the Utah Royals FC name and marks, including the goodwill associated therewith.

14. Despite knowing about Utah Royals FC and its marks the entire time, Major League Baseball sat on its alleged rights, taking no steps to address Utah Royals FC's name or marks or the use thereof.

15. Indeed, it was only after the USPTO initially determined that Women's Soccer's Applications were entitled to registration and subsequently published that Major League Baseball took steps to thwart Women's Soccer's Applications.

16. On information and belief, Major League Baseball has no evidence of any damage or confusion that has or is likely to occur if the subject marks of Women's Soccer's Applications are registered; instead, Major League Baseball has filed the instant Opposition for the ulterior purpose of demoralizing Women's Soccer and stifling professional female sports leagues in general.

WHEREFORE, Applicant prays that the Board deny the Opposition and permit registration of all four (4) of the subject marks of Applicant's Applications.

DATED this 8th day of October, 2018.

Respectfully submitted,

KIRTON McCONKIE

By: */Cameron Hancock/*

Cameron Hancock

James Burton

Joshua S. Rupp

Key Bank Tower
36 South State Street, Suite 1900
Salt Lake City, UT 84111
Telephone: (801) 328-3600
Facsimile: (801-321-4893
chancock@kmclaw.com
jburton@kmclaw.com
jrupp@kmclaw.com

*Attorneys for Applicant National Women's
Soccer League, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of October, 2018, I caused a copy of the foregoing **ANSWER** to be (1) filed utilizing the ESTTA filing system which provides service to all counsel registered thereon and (2) served on the attorneys of record for Opposer, as designated below, by placing a copy in the United States Mail, first class, postage prepaid, addressed as follows (advanced courtesy copy via email):

Mary L. Kevlin
Richard S. Mandel
Robert J. English
Joelle Milov
COWAN LIEBOWITZ & LATMAN, P.C.
114 West 47th Street
New York, New York 10036
jam@cll.com, mlk@cll.com
rsm@cll.com trademark@cll.com
tay@cll.com rje@cll.com

/ Cameron Hancock / _____