

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

In the matter of Registration No. 78/649,789
For the mark: "'RITA PUNCH"

Sociedad Anonima Vina Santa Rita)	
)	
Opposer,)	
)	
v.)	Opposition No. 91170426
)	
Angela J. Barbato)	
)	
Applicant.)	
)	

**APPLICANT'S ANSWER TO AMENDED NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

COMES NOW the Applicant, Angela J. Barbato ("Applicant"), and files her Answer to the Amended Notice of Opposition of Sociedad Anonima Vina Santa Rita ("Opposer") and her Affirmative Defenses, as follows:

ANSWER

1. Applicant denies the allegation contained in paragraph 1 of the Amended Notice of Opposition that Opposer will be damaged by Applicant's registration of the mark shown in Serial No. 78/649,789, admits that said Application is being opposed, denies that the cited statutory references provide a basis for this opposition, and is without knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 1, and therefore denies same.



2. Applicant admits the allegations contained in paragraph 2 of the Amended Notice of Opposition as to Applicant's address and that Applicant filed Application Serial No. 78/649,789 for the mark "RITA PUNCH" on June 13, 2005, but denies the remaining allegations contained in paragraph 2 of the Amended Notice of Opposition as to the nature of that Application and the goods set forth therein. Applicant is without sufficient information to form a belief as to the remaining allegations contained in paragraph 2 of the Notice of Opposition, and therefore denies same.

3. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 3 of the Amended Notice of Opposition, and therefore denies same.

4. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 4 of the Amended Notice of Opposition, and therefore denies same.

5.. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 5 of the Amended Notice of Opposition, and therefore denies same.

6. Applicant incorporates by reference her response to the allegations in paragraphs 1 through 5 of the Amended Notice of Opposition, in response to paragraph 6 of the Amended Notice of Opposition.

7. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 7 of the

Amended Notice of Opposition, and therefore denies same.

8. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 8 of the Amended Notice of Opposition, and therefore denies same.

9. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 9 of the Amended Notice of Opposition, and therefore denies same.

10. Applicant denies the allegations contained in paragraph 10 of the Amended Notice of Opposition.

11. Applicant denies the allegations contained in paragraph 11 of the Amended Notice of Opposition.

12. Applicant denies the allegations contained in paragraph 12 of the Amended Notice of Opposition.

13. Applicant denies the allegations contained in paragraph 13 of the Amended Notice of Opposition.

14. Applicant incorporates by reference her response to the allegations in paragraphs 1 through 13 of the Amended Notice of Opposition, in response to paragraph 14 of the Amended Notice of Opposition.

15. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 15 of the Amended Notice of Opposition, and therefore denies same.

16. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 16 of the

Amended Notice of Opposition, and therefore denies same.

17. Applicant is without sufficient information to form a belief as to the allegations contained in paragraph 17 of the Amended Notice of Opposition, and therefore denies same.

18. Applicant denies the allegations contained in paragraph 18 of the Amended Notice of Opposition.

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

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

21. Applicant denies the allegations contained in the "Conclusion" of the Amended Notice of Opposition, or that Opposer is entitled to the relief set forth therein.

22. Applicant denies each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition, Claim One, fails to state a claim upon which relief can be granted.

2. The Notice of Opposition, Claim Two, fails to state a claim upon which relief can be granted.

3. Upon information and belief, Opposer lacks standing.

4. There is no likelihood of confusion between the Applicant's applied for mark and any marks upon which Opposer could

rely.

5. Opposer cannot rely upon its asserted trademark rights in and to its claimed products in order to assert a claim pursuant to Section 2(a), which claims cannot be based upon trademark rights.

6. Opposer's name or identity for purposes of its Section 2(a) claim is not "SANTA RITA," and Opposer has failed to allege any name or identity upon which it can base its Section 2(a) claims.

7. Opposer has failed to assert and cannot demonstrate a claim under Section 2(a) because Applicant's mark "'RITA PUNCH" is not the same as or a close approximation to the name or identity of Opposer, and does not point uniquely and unmistakably to the identity or persona of Opposer, nor has Opposer sufficiently alleged same.

8. Opposer has failed to assert and cannot demonstrate a claim under Section 2(a) because the fame or reputation of Opposer's and its name or identity is not of sufficient nature that a connection with Opposer would be presumed by the Applicant's use of her mark on the applied for goods and services, nor has Opposer sufficiently alleged same.

9. Opposer has failed to assert and cannot demonstrate a claim under Section 2(a), because Opposer has failed to allege and cannot demonstrate any facts under Section 2(a) which would bring Opposer into disrepute.

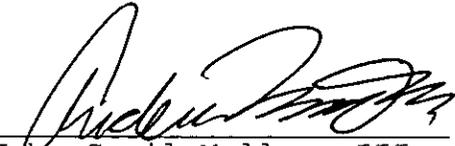
10. Numerous third party marks and registrations incorporating the term "RITA" preclude claims under Section 2(d), on the grounds that Opposer's claimed trademark is descriptive or weak, and not subject to a broad range of protection.

11. Numerous third party marks and registrations incorporating the term "RITA" preclude claims under Section 2(a), on the grounds that Opposer's fame or reputation cannot be sufficient to assert a claim thereunder.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,

Dated: June 15, 2006

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following by United States first class mail, postage pre-paid this 15th day of June 2006:

Brian D. Anderson, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111

Respectfully submitted,

By: 
Andrew W. Ransom
Florida Bar No. 964,344

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the original was sent by first class, postage pre-paid U.S. mail, to the United States Patent and Trademark Office, Trademark Trial & Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451, this 15th day of June, 2006.

Respectfully submitted,

By:



Andrew W. Ransom
Florida Bar No. 964,344