ESTTA Tracking number: **ESTTA104942**

Filing date: **10/18/2006**

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

Proceeding	91171426
Party	Plaintiff PPC Marketing, Ltd.PPC Marketing, Ltd. PPC Marketing, Ltd. 110 S. Texas StreetP.O. Box 93 Pittsburgh, TX 75686-0093 UNITED STATES
Correspondence Address	Nancy Navarro Navarro Law Office, P.C. P.O. Box 166851 Irving, TX 75016 UNITED STATES nancynavarro@verizon.net
Submission	Answer to Counterclaim
Filer's Name	Nancy T. Navarro
Filer's e-mail	nancynavarro@verizon.net
Signature	/lovella/
Date	10/18/2006
Attachments	Response.pdf (4 pages)(58809 bytes)

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

PPC Marketing, Ltd., Opposer, - v - Michael Foods Inc., Applicant. and Michael Foods Inc., Petitioner, -v- PPC Marketing, Ltd., Registrant	Opposition No.: 91171426 Serial No.: 78/544,615 Mark: BETTER 'N EGGS PLUS

Assistant Commissioner of Trademarks
BOX TTAB - NO FEE
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO PETITION TO CANCEL

Registrant, PPC Marketing, Ltd., for its answer to the Petition to Cancel filed by Petitioner, Michael Foods, Ltd., states and alleges as follows:

1. Registrant admits the allegations contained in Paragraph 1 of the Petition to Cancel as to Petitioner's place of business. Registrant denies the rest of the allegations contained in Paragraph 1.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Petition to Cancel.

3. Registrant denies the allegations contained in Paragraph 3 of the Petition to Cancel.

4. Registrant admits that Registrant's Registration No. 2,164,616 is for the trademark EGGS PLUS and Registrant admits that Registrant is using the same trademark EGGSPLUS as alleged in Paragraph 13 of the Petition to Cancel.

5. Registrant denies the allegations contained in Paragraph 14 of the Petition to Cancel.

6. Registrant denies the allegations contained in Paragraph 15 of the Petition to Cancel.

7. Registrant admits that Registration No. 2,401,500 is for the mark as depicted in Paragraph 16 of the Petition to Cancel and Registrant admits that the depiction of the egg packaging with the eggs is what Registrant uses. Registrant denies the rest of the allegations in paragraph 16 of the Petition to Cancel.

8. Registrant denies the allegations contained in Paragraph 17 of the Petition to Cancel.

9. Registrant admits that Registration No. 2,975,706 is for the mark as depicted in Paragraph 18 of the Petition to Cancel and Registrant admits that the depiction of the egg packaging with the eggs is what Registrant uses. Registrant denies the rest of the allegations in paragraph 18 of the Petition to Cancel.

10. Registrant denies the allegations contained in Paragraph 19 of the Petition to Cancel.

11. Registrant denies the allegations contained in Paragraph 20 of the Petition to Cancel.

12. Registrant denies the allegations contained in Paragraph 21 of the Petition to Cancel.

13. Registrant denies the allegations contained in Paragraph 22 of the Petition to Cancel.

14. Registrant denies the allegations contained in Paragraph 23 of the Petition to Cancel.

15. Registrant denies the allegations contained in Paragraph 24 of the Petition to Cancel.

16. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Petition to Cancel.

17. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Petition to Cancel.

18. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Petition to Cancel.

19. Registrant denies knowing Petitioner long prior rights in and to the BETTER 'N EGGS mark and variations. Registrant admits the rest of the allegations contained in Paragraph 28 of the Petition to Cancel.

20. Registrant admits the allegations contained in Paragraph 29 of the Petition to Cancel.

21. Registrant denies the allegations contained in Paragraph 30 of the Petition to Cancel.

22. Registrant denies the allegations contained in Paragraph 31 of the Petition to Cancel.

23. Registrant denies the allegations contained in Paragraph 32 of the Petition to Cancel.

24. Registrant denies the allegations contained in Paragraph 33 of the Petition to Cancel.

25. Registrant denies the allegations contained in Paragraph 34 of the Petition to Cancel.

26. Registrant denies the allegations contained in Paragraph 35 of the Petition to Cancel.

27. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Petition to Cancel.

SEPARATE DEFENSES

In further answer to the Petition to Cancel, Registrant asserts the following affirmative defenses:

1. **FIRST AFFIRMATIVE DEFENSE** - FAILURE TO STATE A BASIS FOR RELIEF
   Petitioner's Petition to Cancel fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the cancellation.

2. **SECOND AFFIRMATIVE DEFENSE** - PETITIONER'S MARK IS DESCRIPTIVE
   The term "BETTER 'N EGGS" (Registration No.2070096) was merely descriptive and lacked secondary meaning at the time of registration.

3. **THIRD AFFIRMATIVE DEFENSE** - NO LIKELIHOOD OF CONFUSION
   Registrant's use of its marks (Registration No. 2164616, 2975706, 2401500) will not mistakenly be thought by the public to derive from the same source as Petitioner's goods under it's mark BETTER'N EGGS (Registration No.2070096), nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval.

4. **FOUTH AFFIRMATIVE DEFENSE** - PETITIONER HAS UNCLEAN HANDS AND/OR HAS COMMITTED FRAUD IN OBTAINING A REGISTRATION
   Upon information and belief, Petitioner has unclean hands and/or has committed fraud in connection with Registration No. 2070096, by fraudulently declaring on or about April 29, 1991, that it was using or intended to use the mark as depicted in the drawing in the application in commerce on or in connection with the goods in the application when it was using another mark.

5. **FIFTH AFFIRMATIVE DEFENSE** - PETITIONER HAS UNCLEAN HANDS AND/OR HAS COMMITTED FRAUD IN FILING SECTION 8 & 15 AFFIDAVITS
   Upon information and belief, Petitioner has unclean hands and/or has committed fraud in connection with Registration No. 2070096, by fraudulently declaring on or about October 31st, 2002, that it was using the mark as depicted in the registration in commerce or in connection with the goods/services identified in the registration; that the mark had been in continuos use in commerce for five consecutive years after the date of registration, or the date of publication under section 12(c), and was still in use in commerce on or in connection with all goods and/or services as identified above, when in fact it was using another mark.

6. **SIXTH AFFIRMATIVE DEFENSE** - REGISTRANT'S MARKS HAVE BEEN REGISTERED FOR MORE THAN 5 YEARS.
   Registrant's Registration No. 2164616 has been registered since June 9, 1998 and Registration No. 2401500 has been registered since November 7, 2000. Petitioner had ample time to Petition to Cancel the Registrations before becoming incontestable and not until Petitioner faced Opposition proceedings.

RELIEF REQUESTED

WHEREFORE, Registrant respectfully requests that this cancellation proceeding be dismissed, with prejudice.

Dated: October 18, 2006

Respectfully submitted,

Nancy T. Navarro
Arthur I. Navarro
Navarro Law Office, P.C.
Attorneys for Registrant
PO BOX 166851
Irving, TX 75016
(972) 659-1275 tel

Electronically Filed via ESTTA:_____