ESTTA Tracking number: **ESTTA207696**
Filing date: **04/28/2008**

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

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|---|---|
| Proceeding | 91182259 |
| Party | Defendant<br>Dutreix-Moomau, Danielle |
| Correspondence Address | DUTREIX-MOOMAU, DANIELLE<br>MY SAFE FOODHANDLER<br>1537 ALICEANNA STREET<br>BALTIMORE, MD 21231<br>UNITED STATES<br>danielle@mysafefoodhandler.com |
| Submission | Motion to Amend/Amended Answer or Counterclaim |
| Filer's Name | Erik M. Pelton |
| Filer's e-mail | emp@tm4smallbiz.com |
| Signature | /ErikMPelton/ |
| Date | 04/28/2008 |
| Attachments | MY SAFE FOODHANDLER - Amended Answer to Opposition FINAL.pdf ( 6 pages )(58804 bytes ) |

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

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|---|---|---|
| Foodhandler, Inc., | ) | |
| Opposer, | ) | Opposition No. 91182259 |
| v. | ) | Application. Serial No. 77207747 |
| Danielle Dutreix-Moomau, | ) | Mark: |
| Applicant. | ) | My Safe Foodhandler |
| | ) | |

MOTION TO ACCEPT AMENDED ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant and moves this board to accept the Amended Answer filed herewith. Applicant files an Amended Answer which more fully states Applicant's responses to the claims in the Notice of Opposition, along with additional facts and defenses. Applicant has retained as counsel the firm of Erik M. Pelton & Associates, PLLC since the filing of Applicant's original Answer. Because discovery in this proceeding has not yet begun – neither party has served initial disclosures upon the other party- acceptance of the Amended Answer will not prejudice Opposer.

WHEREFORE, Applicant hereby requests the Board accept the attached Amended Answer to Notice of Opposition.

Respectfully Submitted,

By: _____

Erik M. Pelton
Attorney for Applicant
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| Danielle Dutreix-Moomau, | ) | Mark: |
| Applicant. | ) | |
| | ) | |



AMENDED ANSWER TO NOTICE OF OPPOSITION

The following is the Amended Answer of Applicant Danielle Dutreix-Moomau ("Applicant"), owner of Federal Trademark Application Serial No. 77207747 for the mark MY SAFE FOODHANDLER & Design depicted above (hereinafter "Applicants' design mark"), by and through Counsel, Erik M. Pelton & Associates, PLLC, to the Notice of Opposition served on January 29, 2008 by Foodhandler, Inc. (hereinafter "Opposer"), and assigned Opposition No. 91182259.

Applicants hereby respond, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Admitted to the extent that the records of the U.S. Patent and Trademark Office substantiate the facts claimed.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition. The records of the U.S. Patent and Trademark Office do not necessarily indicate the current owner of the registration or the mark.

3. Admitted to the extent that the records of the U.S. Patent and Trademark Office substantiate the facts claimed.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition regarding Opposer's ownership of Registration No. 2141694. The records of the U.S. Patent and Trademark Office do not necessarily indicate the current owner of the registration or the mark. The remaining allegations in paragraph 4 are admitted.

5. Denied.

6. Denied. The marks are different and not likely to be confused; furthermore, Opposer's mark and the material common between the marks is weak and descriptive.

7. Denied.

8. Admitted.

FURTHERMORE, Applicants set forth the following in support of its defense:

9. Opposer's FOODHANDLER mark is diluted.

10. Opposer's FOODHANDLER mark is descriptive of the users of Opposer's goods.

11. The words FOOD and HANDLER are used in the fields of food and food safety as part of a trademark by myriad third parties.

12. Opposer's FOODHANDLER mark has not acquired distinctiveness or goodwill in connection with Opposer's goods.

13. Opposer's good and Applicant's services are very different.

14. Upon information and belief, users of Applicant's services are sophisticated purchasers.

15. Upon information and belief, users of Applicant's services are industry professionals.

16. Upon information and belief, purchasers and users of Opposer's goods are sophisticated purchasers.

17. Upon information and belief, purchasers and users of Opposer's goods are industry professionals.

18. Applicants' design mark is unique and distinctive.

19. Applicants' design mark and Opposer's mark are different in sound.

20. Applicants' design mark and Opposer's mark are different in meaning.

21. Applicants' design mark and Opposer's mark are different in appearance.

22. Applicants' design mark and Opposer's mark have very different commercial impressions.

23. Applicants' design mark and Opposer's mark are not likely to cause confusion, mistake or deception to purchasers as to the source of Opposer's goods.

24. Opposer's claims are barred by the doctrine of unclean hands or other applicable equitable principles.

25. Opposer has failed to adequately maintain, police, or enforce any trademark or proprietary rights it may have in its alleged trademarks.

Applicants hereby appoint Erik M. Pelton, a member of the Bars of the State of New Jersey and the District of Columbia, and Christopher Shiplett, a member of the Bar of the Commonwealth of Virginia, at the firm of

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to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

WHEREFORE, Applicants pray that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicants' proposed mark in Application Serial Number 77207747 in the United States Patent and Trademark Office.

A duplicate copy of this Answer to Notice of Opposition has been sent via First Class Mail to counsel for Opposer on April 28, 2008.

Respectfully Submitted,

By: _____

Erik M. Pelton
Attorney for Applicants

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TEL: (703) 525-8009
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EMAIL: emp@tm4smallbiz.com

## CERTIFICATE OF SERVICE

I hereby certify that true copies of the

(a) Motion to Accept Amended Answer to Notice of Opposition, and

(b) Answer to Notice of Opposition

were deposited as First Class mail with the United States Postal Service on April 28, 2008, to Counsel for Opposer at the following address:

Alexa L. Lewis
Mitchell, Silberberg & Knupp LLP
11377 W. Olympic Boulevard
Los Angeles, CA 90064

By: _____
Erik M. Pelton, Esq.