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Filing date: **09/17/2008**

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

Proceeding	91184485
Party	Defendant Quoc Viet Foods, Inc.
Correspondence Address	Darren S. Rimer Rimer & Mathewson LLP 26440 La Alameda, Suite 370 Mission Viejo, CA 92691 trademarks@rimermath.com
Submission	Answer
Filer's Name	Darren S. Rimer
Filer's e-mail	trademarks@rimermath.com
Signature	/Darren S. Rimer/
Date	09/17/2008
Attachments	Answer.pdf (5 pages)(308813 bytes)

Case **QUOCV-014M**
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

F. Gaviña & Sons, Inc.,	)	Opposition No.: 91184485
	)	
Opposer,	)	Serial No.: 77/204,578
	)	
vs.	)	Mark: CAFVINA COFFEE TEA
	)	
Quoc Viet Foods, Inc.,	)	
	)	
Applicant.	)	
	)	

ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Quoc Viet Foods, Inc. ("Applicant") hereby responds to and answers the Notice of Opposition filed by Opposer herein as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 1 of the Notice of Opposition, and therefore denies the same.

2. Applicant admits the allegations made in paragraph 2 of the Notice of Opposition.

3. Applicant asserts that the opposed application speaks for itself. Applicant otherwise denies the allegations made in paragraph 3 of the Notice of Opposition.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5(a) of the Notice of Opposition, and therefore denies the same. However, Applicant admits that U.S. Registration No. 1,326,237 speaks for itself.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5(b) of the Notice of Opposition, and therefore denies the same. However, Applicant admits that U.S. Registration No. 1,334,556 speaks for itself.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5(c) of the Notice of Opposition, and therefore denies the same. However, Applicant admits that U.S. Registration No. 2,442,024 speaks for itself.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 5(d) of the Notice of Opposition, and therefore denies the same. However, Applicant admits that U.S. Registration No. 2,589,211 speaks for itself.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 6 of the Notice of Opposition, and therefore denies the same.

11. Applicant denies the allegations made in paragraph 7 of the Notice of Opposition.

12. Applicant denies the allegations made in paragraph 8 of the Notice of Opposition.

13. Applicant denies the allegations made in paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

14. Opposer's Notice of Opposition fails to state grounds on which relief can be granted.

Second Affirmative Defense

15. Opposer's pleaded marks are not inherently distinctive such that purchasers do not associate such marks with Opposer.

Third Affirmative Defense

16. Opposer is barred from relief by the Doctrine of Laches.

Fourth Affirmative Defense

17. Opposer is barred from relief by the Doctrine of Estoppel.

Fifth Affirmative Defense

18. Opposer is barred from relief by the Doctrine of Unclean Hands.

Sixth Affirmative Defense

19. Opposer's claims are barred because, even if Opposer does have priority of use over its pleaded trademarks, which Applicant denies, there is no likelihood of confusion between Opposer's marks and Applicant's mark.

Seventh Affirmative Defense

20. Opposer is barred from relief by the Doctrine of Acquiescence.

Eighth Affirmative Defense

21. Opposer's claims are barred insofar as Opposer has abandoned its trademarks.

Ninth Affirmative Defense

22. Opposer's claims are barred insofar as Opposer is not the owner of its pleaded trademarks.

Tenth Affirmative Defense

23. Upon information and belief, there have been no instances of actual consumer confusion between Applicant's mark and the Opposer's pleaded marks.

Eleventh Affirmative Defense

24. Opposer lacks protectable trademark rights or other protectable propriety rights in its alleged marks.

Twelfth Affirmative Defense

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

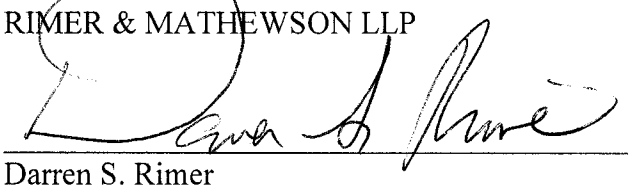
Thirteenth Affirmative Defense

26. There is no likelihood of confusion between the Applicant's mark and the Opposer's pleaded marks as the goods and trade channels of the parties are sufficiently different.

WHEREFORE, Applicant prays that the subject opposition proceeding be dismissed.

Respectfully submitted,

RIMER & MATHEWSON LLP

Dated: 9/17/08 By: 

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(949) 367-1541
Counsel for Applicant

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 26440 La Alameda, Suite 370, Mission Viejo, California 92691. On September 17, 2008, the attached **ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Jonathan Kirsch
Law Offices of Jonathan Kirsch
1880 Century Park East, Suite 515
Los Angeles, CA 90067

Executed on September 17, 2008 at Mission Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of RIMER & MATHEWSON LLP at whose direction service was made.

Darren S. Rimer