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

Proceeding	91184550
Party	Defendant Convenience Food Industries (Private) Limitedmited
Correspondence Address	DAVID E. WESLOW SUTHERLAND ASBILL & BRENNAN LLP 1275 PENNSYLVANIA AVE, NW WASHINGTON, DC 20004-2415 eteas@sablaw.com
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Date	07/21/2008
Attachments	91184550 Answer.pdf (5 pages)(162270 bytes)

IN THE U.S. PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LAZIZA HOLDING COMPANY, Opposer, v. CONVENIENCE FOOD INDUSTRIES (PRIVATE) LIMITED, Applicant.	**E-FILING** Opposition No.: 91184550 Application No.: 77039182 **BOX TTAB** **NO FEE**

ANSWER TO NOTICE OF OPPOSITION
37 CFR § 2.114(b)(1); TBMP § 311.02(a)

In the matter of the above-identified Opposition No. 91184550, CONVENIENCE FOOD INDUSTRIES (PRIVATE) LIMITED ("Applicant") hereby answers the allegations set forth in the Notice of Opposition filed by LAZIZA HOLDING COMPANY ("Opposer").

With respect to the allegations set forth in the non-numbered paragraph at the beginning of the Notice of Opposition, Applicant denies that Opposer "will be damaged" by registration of Applicant's mark, and is without information sufficient to form a belief as to the remaining allegations of the non-numbered paragraph, and accordingly denies the allegations leaving Opposer to its proofs thereof.

With respect to the allegations set forth in the numbered paragraphs of the Notice of Opposition:

1. Applicant is without information sufficient to form a belief as to the allegations of paragraph 1, and accordingly denies the allegations leaving Opposer to its proofs thereof.

2. Applicant is without information sufficient to form a belief as to the allegations of paragraph 2, and accordingly denies the allegations leaving Opposer to its proofs thereof.

3. Applicant admits that Opposer is the owner by assignment of intent-to-use Application Serial No. 75921158 that matured to registration as Reg. No. 2858232. Applicant denies the remaining allegations of paragraph 3.

4. Applicant is without information sufficient to form a belief as to the allegations of paragraph 4, and accordingly denies the allegations leaving Opposer to its proofs thereof.

5. Applicant is without information sufficient to form a belief as to the allegations of paragraph 5, and accordingly denies the allegations leaving Opposer to its proofs thereof.

6. Applicant is without information sufficient to form a belief as to the allegations of paragraph 6, and accordingly denies the allegations leaving Opposer to its proofs thereof.

7. Applicant admits the allegations of paragraph 7.

8. Applicant admits the allegations of paragraph 8.

9. Applicant denies the allegations of paragraph 9.

10. Applicant denies the allegations of paragraph 10.

11. Applicant denies the allegations of paragraph 11.

12. Applicant denies the allegations of paragraph 12.

Applicant denies the allegations set forth in the non-numbered "WHEREFORE" paragraph in the Notice of Opposition and any allegation contained in the Notice of Opposition to which Applicant has not responded specifically.

AMPLIFYING DENIALS
TBMP § 311.02(d)

1. Upon information and belief, Applicant adopted and/or began using its mark before Opposer began using its alleged mark in association with any similar goods, and accordingly, Applicant enjoys priority over Opposer in use of its mark for the goods recited in the application at issue herein.

2. Upon information and belief, the alleged mark of Opposer is not recognized in the relevant trade as a mark of Opposer.

3. Upon information and belief, Applicant's goods are different from Opposer's goods.

4. Upon information and belief, Applicant's goods and Opposer's goods are promoted and sold through different channels of trade.

5. Upon information and belief, the relevant trade and purchasing public is not confused and will not be confused or misled into the belief that Applicant's goods, as set forth in the application at issue herein, are those of Opposer, or are in any way related to Opposer.

AFFIRMATIVE DEFENSES

37 CFR § 2.114(b)(1); TBMP § 311.02(b)

1. Opposer has not alleged grounds sufficient to sustain its burden of proof and the Notice of Opposition therefore fails to state a claim upon which relief can be granted.

2. Opposer has not alleged the elements of a claim of false association under Section 2(a) of the Trademark Act (15 U.S.C. § 1052(a)) or sufficient facts to support such a claim. Therefore, to the extent that Opposer intended to assert a claim of false association, the Notice of Opposition fails to state a claim upon which relief can be granted.

3. Upon information and belief, Opposer has neither used nor registered its alleged mark in association with any goods sufficiently similar to those goods set forth in the application at issue herein to support Opposer's claims of injury, resulting in Opposer's lack of standing to bring this opposition proceeding.

4. To the extent that Opposer is alleging that the goods it provides through use of its alleged mark are confusingly similar to the goods set forth in the application at issue herein, upon information and belief Applicant has priority over Opposer based upon Applicant's earlier

use of its mark in U.S. commerce. Upon confirmation of Opposer's position concerning the purported similarity of the parties' respective relevant goods and Opposer's date of first use of its alleged mark in U.S. commerce, and thus Applicant's priority over Opposer, Applicant will seek leave to amend this answer to assert all available counterclaims for cancellation of Opposer's asserted registration.

5. Upon information and belief, Opposer's asserted federal registration is void and unenforceable under the provisions of 15 U.S.C. § 1060(a). Upon confirmation of the foregoing, Applicant will seek to amend this answer to assert all available counterclaims for cancellation of Opposer's asserted registration.

6. The Notice of Opposition is barred by the doctrine of unclean hands.

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

Respectfully submitted,

CONVENIENCE FOOD INDUSTRIES
(PRIVATE) LIMITED

Dated: July 21, 2008

By: _____

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PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Washington, DC; I am over the age of 18 and am not a party to the above identified action; my business address is 1275 Pennsylvania Ave., NW, Washington, DC 20004. On the date set forth below, I served a true and accurate copy of the document(s) entitled: ANSWER TO NOTICE OF OPPOSITION on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Joanne Ludovici-Lint, Esq.
Sarah Brown, Esq.
McDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, D.C. 20005

Attorneys for Opposer

☒ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Washington, DC.

Dated: 7/21/08

Cindy Whitaker
Cindy Whitaker