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

Proceeding	91184982
Party	Defendant Saber, Andrew J
Correspondence Address	SABER, ANDREW J 9461 CHARLEVILLE BLVD # 132 BEVERLY HILLS, CA 90212-3017 drewsaber@mac.com
Submission	Answer
Filer's Name	Andrew J. Saber
Filer's e-mail	drewsaber@mac.com
Signature	/Andrew J. Saber/
Date	08/08/2008
Attachments	answerpg1.pdf (1 page)(992378 bytes) answerpg2.pdf (1 page)(2428865 bytes) answerpg3.pdf (1 page)(884207 bytes) proofofservice.pdf (1 page)(416277 bytes)

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

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Artisan Confections Company :

Opposer, :

v. :

Andrew J. Saber :

Applicant :

----------X

NOTICE OF ANSWER TO OPPOSITION

Applicant Serial No:	77291748
Filed:	September 28, 2007
Published:	March 11, 2008
Mark:	CACAO OF THE TAO
Opposition No:	91184982

Commisioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant Andrew J. Saber ("Applicant"), managing member of Jing & Co., a California limited liability company located and doing business at 833 W. 182nd St., Gardena, CA 90248 is in receipt of Notice of Opposition (No. 91184982) filed by Artisan Confections Company ("Artisan"), and hereby relinquishes interest in the registration of mark CACAO OF THE TAO shown in Application Serial No. 77291748. In response to Opposition Applicant alleges or acknowledges that:

1. To the best of Applicant's understanding/discovery, Opposer's claim to interest in assets, including trademarks, of Dagoba Organic Chocolate, LLC since October 19, 2006, is valid.
2. To the best of Applicant's understanding/discovery, Opposer's claim that predecessor–in-interest Dagoba Organic Chocolate, LLC has been using mark TAO OF CACAO in connection with its newsletter since October 31, 2005, is valid.
3. Applicant affirms that he and his organization have been using the mark CACAO OF THE TAO in commerce since September 27, 2007, and anywhere since July 25, 2007. Applicant acknowledges that his and/or his organization's use of the mark began approximately one and one-half years after Opposer and it's predecessor-in-interest began using the mark TAO OF CACAO.
4. Applicant's mark CACAO OF THE TAO is highly similar to Opposer's mark TAO OF CACAO.
5. Applicant's goods are related to Opposer's goods only in that they both contain organic cacao. Whereas Opposer's goods are confectionery in nature (chocolate bars), Applicant's goods are marketed and sold as herbal dietary supplements, which contain only small amounts of chocolate solids (less than 15%) for flavor. Applicant's goods are substantially different from Opposer's in other respects as well, such as they are sugar-free, superfood rich, elixirs-(not bars), and therefore they are marketed to different customers than are Opposer's goods.
6. Applicant respects Opposer's concerns regarding potential confusion among uninitiated purchasers, both with respect to (a) origin of goods, and (b) association. For the record however, Applicant asserts:
    a. That neither Applicant nor Applicant's company (Jing & Co., LLC) has ever made any attempt, willful or otherwise, to confuse, deceive or cause mistaken assumption as to origin of goods, among any of its customers or purchasers.
    b. That neither Applicant nor Applicant's company (Jing & Co., LLC) has ever made any attempt, willful or otherwise, to communicate in any way that its goods/services come from, are associated with, sponsored by, approved by, or otherwise related to or affiliated with Opposer.

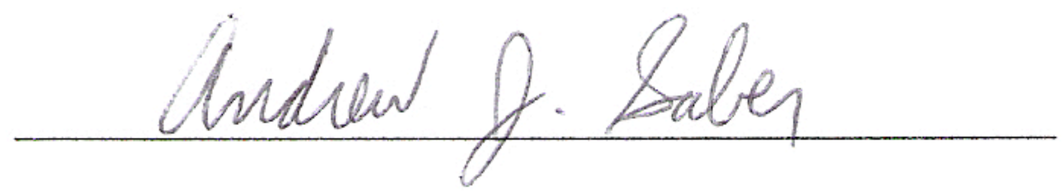
    Additionally, neither Applicant nor his company has ever experienced any inquiry or incident among its customers suggesting confusion relating to points (a) and (b) above.
7. Applicant acknowledges Opposer's concern that Applicant's applied-for mark resembles Opposer's too closely, when applied to goods set forth in Applicant's application. For the record,
    Applicant asserts that Applicant's goods/services might have been more appropriately registered as, Namely: Dietary Supplements, instead of "Chocolate" and perhaps been less offensive to Opposer. Applicant also asserts that if he had discovered a trademark registration on file with the

USPTO, for TAO OF CACAO (Opposer's mark in interest), he would have considered other names for his company's goods.

8. Applicant acknowledges Opposer's concern that Applicant's applied-for mark resembles Opposer's too closely, when applied to goods set forth in Applicant's application, with the same assertions as Applicant's answer to #7 above.

WHEREFORE, Applicant respectfully requests a reasonable allowance of time (4 months from today's date August 8, 2008) to effectively remove the identifying mark CACAO OF THE TAO from his and his company's products, literature, internet activities, and all other related items in commerce or otherwise.

Andrew J. Saber



Andrew J. Saber
Managing Member
Jing & Co., LLC
9461 Charleville Blvd. Ste 132
Beverly Hills, CA 90212
Telephone (888) 546-4101

PROOF OF SERVICE

I, Andrew J. Saber did serve a copy of this Answer To Notice Of Opposition to : Lois B. Duquette, Assistant Secretary, Artisan Confections Company, 100 Crystal A Drive, Hershey, PA, 17033 (Opposer) via UPS ovenight service on August, 8, 2008.

Andrew J. Saber

Andrew J. Saber