

ESTTA Tracking number: **ESTTA259888**

Filing date: **01/10/2009**

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

Proceeding	91187879
Party	Defendant Tropical Snowball, Incorporated
Correspondence Address	TROPICAL SNOWBALL, INCORPORATED TROPICAL SNOWBALL, INCORPORATED 8633 W KNOLL DR APT 205 WEST HOLLYWOOD, CA 90069-4165 billhacket2002@yahoo.com
Submission	Answer
Filer's Name	William Hacket
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Date	01/10/2009
Attachments	trademarkanswer.pdf (7 pages)(102081 bytes)

TRADEMARK
DOCKET NO. 00635-32707

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In Pro Per

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

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)	
Pioneer Family Brands, Inc.,)	
Petitioner,)	
)	
)	
)	
v.)	Opposition No. 91187879
)	
)	
Tropical Snowball,)	
)	
Applicant.)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Tropical Snowball, Inc. (hereinafter "Applicant"), a corporation duly organized and existing under the laws of the State of California and having its principal place of business at 8633 W. Knoll Drive, Apt. 205, West Hollywood, CA 90069 respectfully makes the following answer to the Notice of Opposition filed by Pioneer Family Brands, Inc. (hereinafter "Petitioner"), a corporation duly organized and existing under the laws

of the state of Utah and having its principal place of business at 12674 South Pony Express Road, #1, Draper, Utah 84020. Applicant pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant admits the allegations thereof.
2. Answering paragraph 2 of the Notice of Opposition, Applicant admits the allegations thereof.
3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
4. Answering paragraph 4 of the Notice of Opposition, Applicant admits the allegations thereof.
5. Answering paragraph 5 of the Notice of Opposition, Applicant admits the allegations thereof.
6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph 7 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
8. Answering paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
12. Answering paragraph 12 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
13. Answering paragraph 13 of the Notice of Opposition, Applicant denies each and every allegation contained therein.
14. Applicant further affirmatively alleges that there is not a likelihood of confusion, mistake or deception, because inter alia, Applicant's mark and the pleaded mark of Opposer are not confusingly similar.
15. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded mark of Opposer are not confusingly similar. There is no similarity between Tropical Snowball and Tropical Sno. According to Wikipedia a snowball is a spherical object made from frozen water or snow, usually created by scooping snow with the hands, and compacting it into a roughly fist-sized ball. Snow on the other hand is a type of precipitation in the form of crystalline water ice, consisting of a multitude of snowflakes that fall from the clouds. The process of precipitation is called snowfall. Upon information and belief there is no definition of SNO in Wikipedia because the "word" does not exist. According to Wikipedia SNO is defined as The Sudbury Neutrino Observatory which is a neutrino observatory located 6800 feet high.

16. Applicant further affirmatively alleges that the marks in question do not create the same overall impression. A snowball is a distinct spherical object that kids throw at each other during a snowball fight. "Sno" if we take it to mean snow is simply precipitation that falls from the sky. Side by side Tropical Snowball and Tropical Sno in no way create the same overall impression.
17. Applicant further affirmatively alleges that there is no likelihood of confusion in that applicant and opposer are targeting a different demographic and different end user of the product. Furthermore, the products offered are very different in the sense that Tropical Sno is basically offering garden variety snow cones that can be found at any school fair or carnival. The dessert offered by Tropical Snowball is a true Hawaiian Shaved ice product using distinct plastic containers and targeted to the high end customer with a lot of disposable income. Applicant intends to satisfy the discerning palate of consumers accustomed to Starbucks and Pinkberry not the messy snow cone thrown to a consumer on a hot summer day in the park. Upon information and belief the average price with toppings will be in the order of \$5.00 and as high as \$7.00 not the lower priced snow cone sold by the local girl scouts or Topical Sno at the local carnival. Upon information and belief opposer has an operation of supplying flavorings and products as wells as rolling/stationary carts that can be set up at carnivals whereas Applicant intends to have high end locations with a distinct hip tropical theme featuring models, and music with an Abercrombie and Fitch feel.
18. Applicant further affirmatively alleges that consumers are not likely to believe that the applicants's frozen desserts are produced in connection with the frozen

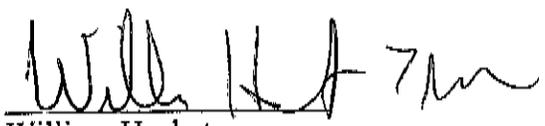
desserts cited in opposer's registration. Just on the face of it Applicant intends to use the mark in connection with shaved ice and shaved ice products together with a whole litany of assorted toppings combined with ice cream and frozen yogurt offerings. Please refer to Petitioner's Notice of Opposition on page 2 paragraph 1. Tropical Sno is used in connection with flavored shaved ice and flavorings for shaved ice alone. Please refer to Petitioner's Notice of Opposition on page 2 paragraph 2. There is a huge difference alone in the overall type and style of products being offered by these two entities further lessening any possibility for confusion.

19. Applicant further affirmatively alleges that Applicant's services in connection with Applicant's mark will not be offered to the same or similar class of purchasers as are Opposer's goods offered in connection with Opposer's mark.
20. Applicant further affirmatively alleges that Applicant's goods offered in connection with Applicant's mark will not be offered in similar channels of commerce as those goods offered by Opposer in connection with Opposer's mark.
21. Therefore, applicant contends that there is no confusing similarity between the goods of the applicant and the opposer. The registration of the TROPICAL SNOWBALL mark is not likely to cause confusion or likely to deceive purchasers or prospective purchasers as to the source of the sponsorship of such goods.

WHEREFORE, Applicant prays that registration be granted and that the Notice of Opposition be dismissed.

DATED this 9th day of January, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on opposing counsel by mailing said copy on January 9, 2009, via First Class Mail, postage prepaid to:

Peter M. de Jonge
J. Abby Barraclough
THORPE NORTH & WESTERN, LLP
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William Hackett