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

Proceeding	91193680
Party	Defendant Kentucky Distillers' Association
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Sazerac Company, Inc. Opposer, v. Kentucky Distillers' Association Applicant.	Opposition No. 91193680 Mark:  Serial No. 77/649,426 Filed: February 4, 2009
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**REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR
EXTENSION OF TIME TO FILE ANSWER TO OPPOSITION**

The Applicant, Kentucky Distillers' Association, ("hereinafter KDA"), by and through its undersigned counsel, respectfully submits this Reply to Opposer's Opposition to Applicant's Motion for Extension of Time To File Answer to Opposition and states as follows:

1. Applicant denies that Opposer ("Sazerac") has been or will be prejudiced by thirty day delay in the filing of Applicant's Answer to its Opposition as alleged. Sazerac has failed to show how it has been or will be prejudiced wherein it merely states that its "business and commercial relationships as well as consumer perception are directly affected by the proceeding" without stating with any specificity how any such relationships or consumer perception are affected. Sazerac is well aware that Applicant owns the mark KENTUCKY BOURBON TRAIL in connection with the goods and services listed in its Application, identified as U.S. Trademark Application Serial No.

77/649,426 and as evidenced in its numerous Federal Trademark Registrations, i.e. “KENTUCKY BOURBON TRAIL” with design (U.S. Trademark Registration No. 2,584,119), “KENTUCKY BOURBON TRAIL” (U.S. Trademark Registration No. 3,556,684), “KENTUCKY BOURBON TRAIL” with design (U.S. Trademark Registration No. 3,556,715) and “KENTUCKY BOURBON TRAIL” (U.S. Trademark Registration No. 3,710,981). In addition, Sazerac is also well aware that Applicant has owned and used its KENTUCKY BOURBON TRAIL mark in connection with various goods and services since at least as early as 1999. Therefore, any claim by Sazerac that Sazerac's “business and commercial relationships as well as consumer perception are directly affected by the proceeding” is without support.

2. As stated in Applicant’s Motion for Extension of Time and, an extension of time was requested due to the complexity of the issues at hand and the ongoing proceedings involving similar questions of law or fact which include:

a. Opposition Proceeding No. 91193207:

Defendant: Sazerac Company, Inc.

Defendant’s Mark:

BUFFALO TRACE DISTILLERY ON THE BOURBON TRAIL

Serial No.: 77/801,708

Plaintiff: Kentucky Distillers' Association

Plaintiff’s Marks:

KENTUCKY BOURBON TRAIL

Serial No.: 76/311725 Registration No.: 2,584,119

KENTUCKY BOURBON TRAIL

Serial No.: 77/470390 Registration No.: 3,556,684

KENTUCKY BOURBON TRAIL

Serial No.: 77/472229 Registration No.: 3,556,715

KENTUCKY BOURBON TRAIL

Serial No.: 77/473652 Registration No.: 3,710,981

KENTUCKY BOURBON TRAIL

Serial No.: 77/649426

b. Opposition Proceeding No. 91193209

Defendant: Sazerac Company, Inc.

Defendant's Mark: BUFFALO TRACE DISTILLERY ON THE BOURBON TRAIL Serial No.: 77/801,708

Plaintiff: Kentucky Distillers' Association

Plaintiff's Marks:

KENTUCKY BOURBON TRAIL

Serial No.: 76/311725 Registration No.: 2,584,119

KENTUCKY BOURBON TRAIL

Serial No.: 77/470390 Registration No.: 3,556,684

KENTUCKY BOURBON TRAIL

Serial No.: 77/472229 Registration No.: 3,556,715

KENTUCKY BOURBON TRAIL

Serial No.: 77/473652 Registration No.: 3,710,981

KENTUCKY BOURBON TRAIL

Serial No.: 77/649426

c. Opposition Proceeding No. 91193210

Defendant: Sazerac Company, Inc.

Defendant's Mark:

BUFFALO TRACE DISTILLERY ON THE BOURBON TRAIL

Serial No.: 77/801,708

Plaintiff: Kentucky Distillers' Association

Plaintiff's Marks:

KENTUCKY BOURBON TRAIL

Serial No.: 76/311725 Registration No.: 2,584,119

KENTUCKY BOURBON TRAIL

Serial No.: 77/470390 Registration No.: 3,556,684

KENTUCKY BOURBON TRAIL

Serial No.: 77/472229 Registration No.: 3,556,715

KENTUCKY BOURBON TRAIL

Serial No.: 77/473652 Registration No.: 3,710,981

KENTUCKY BOURBON TRAIL

Serial No.: 77/649426

d. Opposition Proceeding No. 91193212

Defendant: Sazerac Company, Inc.

Defendant's Mark:

BUFFALO TRACE DISTILLERY ON THE BOURBON TRAIL

Serial No.: 77/801,708

Plaintiff: Kentucky Distillers' Association

Plaintiff's Marks:

KENTUCKY BOURBON TRAIL

Serial No.: 76/311725 Registration No.: 2,584,119

KENTUCKY BOURBON TRAIL

Serial No.: 77/470390 Registration No.: 3,556,684

KENTUCKY BOURBON TRAIL
Serial No.: 77/472229 Registration No.: 3,556,715
KENTUCKY BOURBON TRAIL
Serial No.: 77/473652 Registration No.: 3,710,981
KENTUCKY BOURBON TRAIL
Serial No.: 77/649426

A quick review of these proceedings and the scheduling orders issued in the same evidences the complexity of the issues at hand and the volume of pleadings involved with the proceedings and numerous due dates associated with the same. Applicant is working diligently in meeting these due dates (e.g. filing three (3) Answers to Sazerac's Counterclaims for Cancellation on March 22nd), including the due dates in this proceeding.

3. Furthermore, any suggestion that Applicant has had nearly fourteen weeks to consider the pertinent factual and legal issues related to this Opposition proceeding is inaccurate and misleading where the record is clear, and as admitted by Sazerac, the Notice of Opposition against the Applicant's application which is the subject of this proceeding was filed on February 4, 2009.

4. Regardless of Sazerac's unsupported claims as asserted in its Opposition, Applicant has filed its Answer to Sazerac's Notice of Opposition in this matter, a copy of which is attached as **Exhibit A** and further states that Sazerac's Opposition to Applicant's Motion for Extension of Time to File Answer to Opposition is moot. Applicant also anticipates filing a Motion to Consolidate the above listed proceedings along with the present proceeding with the Trademark Trial and Appeal Board in an effort to save time, effort and expense wherein the consolidation of said proceedings will not result in any prejudice or inconvenience to either party.

Respectfully submitted,
PITTS & BRITTIAN, P.C.

/Jennifer A. Cameron/

Dated: March 24, 2010

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME TO FILE ANSWER TO OPPOSITION and APPLICANT'S ANSWER TO NOTICE OF OPPOSITION attached as Exhibit A was served on opposing counsel by United States Mail, first-class postage prepaid, at the address listed below and via email this 24th day of March, 2010.

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Respectfully submitted,
PITTS & BRITTIAN, P.C.

/Jennifer A. Cameron/_____

By: Jennifer A. Cameron
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EXHIBIT A

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

Sazerac Company, Inc. Opposer, v. Kentucky Distillers' Association Applicant.	Opposition No. 91193680 Mark:  Serial No. 77/649,426 Filed: January 14, 2009
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ANSWER TO NOTICE OF OPPOSITION

Kentucky Distillers' Association ("Applicant") hereby files an Answer to the Notice of Opposition as set forth below.

Responding to the preamble of the Notice of Opposition, Applicant admits that Opposer Sazerac Company, Inc. ("Opposer") is a Louisiana corporation having its principal place of business at 803 Jefferson Highway, New Orleans, Louisiana 70152. Applicant denies that Opposer will be damaged by the registration of the mark KENTUCKY BOURBON TRAIL and Design ("Applicant's Mark") as shown in Application Serial No. 77/649,426. Applicant admits that on January 26, 2010, Opposer filed an Extension of Time to Oppose Applicant's registration of the mark KENTUCKY BOURBON TRAIL and Design ("Applicant's Mark") as shown in Application Serial No. 77/649,426. With respect to the remaining allegations in the preamble, Applicant lacks information sufficient to form a belief as to such allegations, and therefore denies the same.

1. Applicant admits that Opposer markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including whiskeys and bourbons. Applicant lacks information sufficient to form a belief as to the other allegations in Paragraph 1 of the Notice of Opposition, and therefore denies the same.

2. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 2 of the Notice of Opposition, and therefore denies the same.

3. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Applicant denies the allegation in Paragraph 4 of the Notice of Opposition that “Buffalo Trace Distillery and the Tom Moore Distillery are located on the bourbon trail.” Applicant lacks information to form a belief as to the other allegations set forth in Paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Applicant admits that on January 14, 2009 it filed an intent-to-use federal trademark application for the mark KENTUCKY BOURBON TRAIL plus design. Applicant admits that it seeks registration of the KENTUCKY BOURBON TRAIL plus design in connection with: “candles” in International Class 4; “refrigerator magnets; decorative magnets” in International Class 9; “lapel pins” in International Class 14; “posters; paper napkins; paper placemats; coasters made of paper; printed materials, namely, books, booklets, and magazines on the topic of the bourbon and distilled spirits industries; printed maps; decals; stickers; bumper stickers; trading cards; calendars; novelty items, namely, identification documents in the nature of imitation passports; pens; pencils; post cards; note pads; greeting cards; note books; address books; binders; stationery; Christmas cards; photographs; bookmarks; artwork, namely, art prints, art

pictures, pictures; cookbooks” in International Class 16; “tote bags; luggage tags; umbrellas” in International Class 18; “commemorative wooden barrel heads” in International Class 20; “flasks; shot glasses; drinking glasses; mugs; cups; paper plates; paper cups; beverage glassware; portable beverage coolers in the nature of insulating sleeve holders for beverage cans and bottles; plates; dinnerware; coasters made of stone, leather, wood, cork and plastic; portable beverage and food coolers; fitted wooden toasting boxes” in International Class 21; “towels; textile napkins; kitchen linens and place mats not of paper” in International Class 24; “clothing, namely, shirts, t-shirts, pants, shorts, sweaters, sweatshirts, caps, visors, hats, jackets, ties, belts, aprons, headwear, footwear” in International Class 25; “Christmas tree ornaments; baseballs; golf balls and corn hole game sets comprised of bean bags and playing boards sold together as a unit” in International Class 28; “candy; confections, namely, bourbon balls; coffee” in International Class 30; “promoting business and tourism in the bourbon-producing region of Kentucky; association services, namely, promoting the interests of the Kentucky bourbon industry” in International Class 35; “conducting, operating and organizing tours related to the bourbon industry” in International Class 39; and “educational services, namely, providing educational information to others related to the history of and current news about the bourbon industry; entertainment services, namely, arranging and conducting special events related to the bourbon industry” in International Class 41. Applicant denies the allegations in Paragraph 5 of the Notice of Opposition that it seeks registration of the KENTUCKY BOURBON TRAIL plus design in connection with: “wooden toasting boxes for consumer use” in International Class 20.

6. Applicant denies the allegations in Sentence 1 through 3 of Paragraph 6 of the Notice of Opposition. Applicant further denies any allegations as set forth in Sentence 4 of the Notice of Opposition that there is or will be any interference with Opposer's commercial activities by the registration of Applicant's mark including but not limited to the Opposer's ability to "accurately describe to tourists and other members of the public" the location of its distilleries. Applicant also denies any allegations as set forth in Sentence 4 that Opposer's distilleries, Buffalo Trace and Tom Moore, are located on the "KENTUCKY BOURBON TRAIL" or the "BOURBON TRAIL" Kentucky. With respect to any other allegations made in Paragraph 6 of the Notice of Opposition which require a response by Applicant, Applicant denies any such allegations.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

Responding to the title "The Textual Component of Applicant's Mark is Generic" of the Notice of Opposition, the Applicant denies that the textual component of its Mark is Generic.

8. Applicant admits that the textual component of its mark consists of the words "KENTUCKY BOURBON TRAIL."

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations in Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations in Paragraph 20 of the Notice of Opposition.

21. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 21 of the Notice of Opposition, and therefore denies the same.

22. Applicant denies the allegations in Paragraph 22 of the Notice of Opposition.

Responding to the title “The Graphical Component of Applicant’s Mark is Generic” of the Notice of Opposition, the Applicant denies that the Graphical Component of its Mark is Generic.

23. Applicant denies the allegations in Paragraph 23 of the Notice of Opposition.

24. Applicant denies the allegations in Paragraph 24 of the Notice of Opposition.

25. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 25 of the Notice of Opposition, and therefore denies the same.

26. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 26 of the Notice of Opposition, and therefore denies the same.

27. Applicant denies the allegations in Paragraph 27 of the Notice of Opposition.

28. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 28 of the Notice of Opposition to the extent that the allegation contained in the same is ambiguous where Opposer alleges that the Applicant has “**publicly associated itself** with institutions or organizations that display depictions of bourbon barrels in their promotion of the bourbon industry”, and therefore denies the same.

29. Applicant denies the allegations in Paragraph 29 of the Notice of Opposition.

30. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 30 of the Notice of Opposition, and therefore denies the same.

Responding to the title “Applicant’s Textual Component of Applicant’s Mark is Primarily Geographically Descriptive and the Graphical Component is Merely Descriptive of its Applicable Goods and Services” of the Notice of Opposition, the Applicant denies that

the textual component of its mark is primarily geographically descriptive and the graphical component is merely descriptive of its applicable goods and services.

31. Applicant is without knowledge or information as to Opposers' *belief* that its arguments as asserted in Paragraph's 1 through 30 of the Notice of Opposition provide adequate grounds for denying the registration of Applicant's Mark, and therefore denies the same. Applicant further denies any allegation by Opposer that its arguments as asserted in Paragraph's 1 through 30 of the Notice of Opposition are adequate grounds for denying the registration of Applicant's Mark. Finally, Applicant denies any and all remaining allegations made by Opposer in Paragraph 31 of the Notice of Opposition including but not limited to any such allegation that **"Applicant can provide overwhelming evidence that the textual component of Applicant's mark is geographically descriptive, and the graphical component is merely descriptive."**

32. Applicant denies the allegations in Paragraph 32 of the Notice of Opposition.

33. Applicant denies the allegations in Paragraph 33 of the Notice of Opposition.

34. Applicant denies the allegations in Paragraph 34 of the Notice of Opposition.

Responding to the title "A. Textual Component is Primarily Geographically Descriptive" of the Notice of Opposition, the Applicant denies that the textual component of its mark is primarily geographically descriptive.

35. Applicant denies the allegations in Paragraph 35 of the Notice of Opposition.

36. Applicant denies the allegations in Paragraph 36 of the Notice of Opposition.

37. Applicant denies the allegations in Paragraph 37 of the Notice of Opposition.

38. Applicant denies the allegations in Paragraph 38 of the Notice of Opposition that state-funded and state-maintained roadway signs identify roads and exits for motorists to locate and drive the “Kentucky Bourbon Trail” or the “Bourbon Trail.” Applicant admits that there are state-funded and state-maintained roadway signs in Kentucky which include the Applicant’s federally registered “KENTUCKY BOURBON TRAIL” marks, e.g. “KENTUCKY BOURBON TRAIL” with design (U.S. Trademark Registration No. 3,556,715), to identify roads and exits for motorists to locate the bourbon distilleries which are members of the KDA and participate in Applicant’s “KENTUCKY BOURBON TRAIL” promotional activities.

39. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 39 of the Notice of Opposition, and therefore denies the same.

40. Applicant lacks information sufficient to form a belief as to the allegations in Paragraph 40 of the Notice of Opposition, and therefore denies the same.

41. Applicant denies the allegations in Paragraph 41 of the Notice of Opposition.

42. Applicant denies the allegations in Paragraph 42 of the Notice of Opposition.

43. Applicant denies the allegations in Paragraph 43 of the Notice of Opposition.

44. Applicant denies the allegations in Paragraph 44 of the Notice of Opposition.

45. Applicant denies the allegations in Paragraph 45 of the Notice of Opposition.

46. Applicant denies the allegations in Paragraph 46 of the Notice of Opposition.

Responding to the title “B. The Graphical Component is Merely Descriptive” of the Notice of Opposition, the Applicant denies that the Graphical Component of its Mark is Merely Descriptive.

47. Applicant admits that part of the graphical component of its Mark, the KENTUCKY BOURBON TRAIL and Design (“Applicant’s Mark”) which is the subject of the Application Serial No. 77/649,426 includes a barrel and is shown below:



Applicant denies that the barrel as used in its mark, KENTUCKY BOURBON TRAIL and Design (“Applicant’s Mark”) as a whole and as shown above, is descriptive. Applicant lacks information sufficient to form a belief as to as to the other allegations in Paragraph 47 of the Notice of Opposition, and therefore denies the same.

48. Applicant admits by law that bourbon must be aged in “charred new oak containers.” Applicant lacks information sufficient to form a belief as to the other allegations in Paragraph 49 of the Notice of Opposition, and therefore denies the same.

49. Applicant denies the allegations in Paragraph 50 of the Notice of Opposition.

50. Applicant denies the allegations in Paragraph 51 of the Notice of Opposition.

51. Applicant denies the allegations in Paragraph 52 of the Notice of Opposition.

52. Applicant denies the allegations in Paragraph 53 of the Notice of Opposition.

53. Applicant admits that the registration of its Mark would give Applicant prima facie evidence of the validity and ownership of its Mark and its exclusive right to use its Mark, as is the case in its existing federally registered “KENTUCKY BOURBON TRAIL” Marks. Applicant denies that the registration of its mark would be to the detriment of Sazerac, others in the Kentucky bourbon industry, and the public in general.

54. The prayer for relief in Paragraph 55 of the Notice of Opposition does not require an admission or denial by Applicant. To the extent a response is required, the allegations are denied.

GENERAL DENIAL

Applicant denies any and all factual allegations in the Notice of Opposition that is not specifically admitted or otherwise addressed in the preceding paragraphs and demands strict proof thereof. Applicant further denies that Opposer is entitled to any relief including the relief requested in the Notice of Opposition and respectfully submits that the Notice of Opposition should be dismissed.

AFFIRMATIVE DEFENSES & ALLEGATIONS

First Affirmative Defense

The Notice of Opposition fails to state a claim, in whole or in part, upon which relief may be granted. Accordingly, Opposer is not entitled to the relief sought in the Notice of Opposition.

Second Affirmative Defense

Opposer lacks standing to oppose Applicant’s mark where Opposer will not be damaged by the registration of the mark KENTUCKY BOURBON TRAIL and Design (“Applicant’s Mark”) as shown in Application Serial No. 77/649,426. Applicant owns numerous federal trademark registrations in the mark KENTUCKY BOURBON TRAIL and KENTUCKY BOURBON TRAIL and Design which include:

MARK	REGISTRATION NUMBER	TYPE OF REGISTRATION	GOODS/ SERVICES	DATE OF FIRST USE
KENTUCKY BOURBON TRAIL + design 	2,584,119	Supplemental	IC35: association services, namely promoting the interests of the Kentucky bourbon industry IC41: providing guided tours of bourbon distilleries	5/25/99
KENTUCKY BOURBON TRAIL	3,556,684	Principal	IC35: association services, namely promoting the interests of the Kentucky bourbon industry IC41: providing guided tours of bourbon distilleries	5/25/99
KENTUCKY BOURBON TRAIL + design 	3,556,715	Principal	IC35: association services, namely promoting the interests of the Kentucky bourbon industry	2007
KENTUCKY BOURBON TRAIL	3,710,981	Principal	IC35: Promoting tourism in the Central Kentucky region of the United States featuring the provision of hospitality referral information, and the provision of consumer information in the field of	5/25/99

MARK	REGISTRATION NUMBER	TYPE OF REGISTRATION	GOODS/ SERVICES	DATE OF FIRST USE
			bourbon and bourbon distilleries to tourists and visitors IC39: Organizing, conducting, and operating tours related to the bourbon industry IC40: Providing information to others related to the bourbon making process IC41: Educational services, namely, providing educational information to others related to the history and current news about the bourbon industry; entertainment services, namely, arranging and conducting special events related to the bourbon industry	

As provided above, Applicant has been using its KENTUCKY BOURBON TRAIL marks at least as early as May 1999. Accordingly, Opposer will not be damaged by the registration of the mark KENTUCKY BOURBON TRAIL and Design (“Applicant’s Mark”) as shown in Application Serial No. 77/649,426 and therefore, is not entitled to the relief sought in the Notice of Opposition.

Third Affirmative Defense

Opposer’s claims are barred by the doctrine of estoppel, laches, and/or acquiescence. Accordingly, Opposer is not entitled to the relief sought in the Notice of Opposition.

Fourth Affirmative Defense

Opposer’s claims are barred by the doctrine of licensee estoppel. Accordingly, Opposer is not entitled to the relief sought in the Notice of Opposition.

Fifth Affirmative Defense

Opposer's claims are barred by the doctrine of waiver. Accordingly, Opposer is not entitled to the relief sought in the Notice of Opposition.

Sixth Affirmative Defense

Opposer's claims are barred by the doctrine of unclean hands wherein the Opposer has engaged in inequitable conduct directly related to the subject matter of this proceeding. Accordingly, Opposer is not entitled to the relief sought in the Notice of Opposition.

Sixth Affirmative Defense

Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

WHEREFORE, Applicant respectfully requests that Opposition No. 91193680 be dismissed with prejudice, and that the U.S. Patent and Trademark Office allow Application Serial No. 77/649,426 to issue into a registration.

Respectfully submitted,

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Counsel for Applicant

Dated: March 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on opposing counsel by United States Mail, first-class postage prepaid, at the address listed below and via email this 24th day of March, 2010 .

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Respectfully submitted,
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