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

Proceeding	91194115
Party	Plaintiff Latarie (Pty) Limited
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Date	10/19/2010
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IN THE UNIETED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Latarie (Pty) Limited	)	
	)	
Opposer/Counterclaim Registrant	)	
	)	Opposition No. 91194115
v.	)	Appln. No. 77832433
	)	Mark: Zafrika
Robert Marx	)	
	)	
Applicant/Counterclaim Petitioner	)	

OPPOSER'S ANSWER TO APPLICANT'S
AMENDED COUNTERCLAIM AND PETITION FOR CANCELLATION

Opposer/Counterclaim Registrant (herein "Opposer") hereby submits the following responses to the allegations in the Amended Counterclaim and Petition for Cancellation dated September 15, 2010 by Applicant/Counterclaim Petitioner (herein "Applicant").

1. Admitted.

2. Denied.

3. Denied.

4. Denied, even assuming that Applicant is referring to De Villiers Brits ("Brits") here and throughout his allegations.

5. Admitted.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 10, and these allegations are thereby denied.

11. Denied.

12. Opposer admits that Brits proposed the use of the trademark DOMESTIC DOG, but denies the remainder of the allegations in paragraph 12.

13. Opposer admits the allegations in paragraph 13, but denies any implication as to the suggested timeframe of this occurrence.

14. Denied.

15. Opposer admits that it commissioned an artist to develop sample labels to be placed on the wine to be sold through Trader Joe's, but denies the remainder of the allegations in paragraph 15.

16. Opposer admits that a label for the wines to be sold through Trader Joe's prominently displayed the ZARÀFA trademark, but denies the remainder of the allegations in paragraph 16.

17. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17, and these allegations are thereby denied.

18. Denied.

19. Denied.

20. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 20, and these allegations are thereby denied.

21. Denied.

22. Denied.

23. Opposer admits the allegations of paragraph 23 except for the word "Nevertheless" which is denied.

24. Opposer admits that in connection with filing its application to register the mark ZARÀFA, Opposer's attorney of record, Burton Ehrlich, electronically executed the declaration of that application on Opposer's behalf, and that the wording of that declaration, which is of record in this proceeding, speaks for itself; Opposer otherwise denies the remaining allegations of paragraph 24.

25. Admitted.

26. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 26, and these allegations are thereby denied.

27. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 27, and these allegations are thereby denied.

28. Opposer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 28, and these allegations are thereby denied.

29. Opposer denies that Applicant asked Opposer to provide sample wines to MT Global so that Applicant could provide Trader Joe's with a prospective ZARÀFA wine of higher quality; otherwise, Opposer is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 29, and these allegations are thereby denied.

30. Opposer admits that Trader Joe's continued its sales of ZARÀFA wine, but otherwise denies the remaining allegations of paragraph 30.

31. Denied.

32. Opposer admits that Brits advised Trader Joe's that MT Global was replaced as the exclusive West Coast importer of ZARÀFA wine for Trader Joe's; otherwise, Opposer denies the remaining allegations of paragraph 32.

33. Opposer denies the substantive allegation of paragraph 33 and as to Applicant's "information and belief" Opposer is without sufficient information or knowledge to form a belief as to the truth of that allegation and that portion is thereby denied.

34. Opposer admits that it instituted this opposition proceeding in March 2010 against Applicant's application to register the mark ZAFRIKA; and Opposer otherwise denies the remaining allegations of paragraph 34.

First Basis for Cancellation

35. Opposer hereby incorporates and re-alleges its responses above in paragraphs 1 through 34.

36. Admitted.

37. Opposer admits that it knew that MT Global, and hence Applicant, were marketing ZARÀFA wine in the United States by permission of Opposer as the owner of the trademark; otherwise, Opposer denies the remaining allegations of paragraph 37.

38. Opposer incorporates its admission to paragraph 37 above and otherwise denies the allegations of paragraph 38.

39. Opposer incorporates its admission to paragraph 37 above and otherwise denies the allegations of paragraph 39.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

Second Basis for Cancellation

44. Opposer hereby incorporates and re-alleges its responses above in paragraphs 1 through 43.

45. Admitted.

46. Denied.

47. Opposer admits that at the time it filed its Statement of Use on October 19, 2007 Opposer knew of Applicant's use of the ZARÀFA mark via MT Global by permission of Opposer as the owner of the mark; otherwise, Opposer denies the remaining allegations of paragraph 47.

48. Denied.

Third Basis for Cancellation

49. Opposer hereby incorporates and re-alleges its responses above in paragraphs 1 through 48.

50. Admitted.

51. Denied inasmuch as Opposer controls the nature and quality of the wines identified by the trademark ZARÀFA with respect to any use of that mark by Applicant via MT Global in connection with marketing said wines in the United States.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

WHEREFORE, Opposer respectfully requests that Applicant's Amended Counterclaim and Petition for Cancellation be dismissed.

Dated: October 19, 2010

By: Michael Culver

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Certificate of Service

This is to certify that a copy of the foregoing was served this 19th day of October 2010 by first class mail, postage prepaid, on the following:

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