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

Proceeding	91195262
Party	Plaintiff Sensible Foods LLC
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Attachments	SF Reply PDF.pdf ( 3 pages )(246507 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the mark “SENSIBLE PORTIONS” under Application Serial Nos. 77/833,401 and 77/833,386 Published in the Official Gazette of February 16, 2010 and Registration No. 3,195,083.

Applicant : World Gourmet Marketing, LLC/Hain Gourmet, Inc.  
Mark : SENSIBLE PORTIONS  
Serial No. : 77/833,401 & 77/833,386  
Filed : September 23, 2009  
Reg. No. : 3,195,083  
Recorded : January 2, 2007  
Assignment 3 : October 05, 2010 [4290/0117]  
SENSIBLE FOODS, LLC )  
 )  
Opposer/Petitioner, ) Opposition No. **91195262**  
 ) Cancellation No. **92053083**  
 )  
v. )  
 )  
WORLD GOURMET MARKETING, LLC )  
and HAIN GOURMET, INC. )  
 )  
 )  
Applicant/Respondent )

REPLY TO APPLICANT’S/REGISTRANTS’ MEMORANDUM OF LAW IN OPPOSITION TO OPPOSER’S MOTION TO STRIKE CERTIN AFFIRMATIVE DEFENSE

Opposer/Petitioner (“Opposer”) is in receipt of Applicant/Respondent’s Memorandum of Law (“Applicant’s Response”) sent March 4, 2011, by first-class mail and submits this reply under the authority of 37 CFR § 2.127(a)<sup>1</sup> to clarify the issues under consideration and correct crucial dates. The Opposer requests that the TTAB consider the following brief clarifications and corrections to the Applicant’s Response. The Opposer is not re-arguing any of its points.

<sup>1</sup> Seculus da Amazonia S/S v. Toyota Jidosha Kabushiki Kaisha, 66 USPQ2d 1154, n.4 (TTAB 2003) (reply brief considered because it clarified the issues under consideration).

## OPPOSER'S MOTION TO STRIKE WAS TIMELY

As per 37 CFR § 2.119(c), "5 days shall be added to the prescribed period" when service is made by first-class mail." Therefore, the Opposer's brief was due by January 23, 2011, 25 days from December 29, 2010, the filing date of Applicant's Answer (TTABVue Doc. 12). Opposer's motion was filed January 21, 2011, before the deadline.

### REPLY B3: OPPOSER'S RIGHT TO OPPOSE ACCRUED FROM THE FEBRUARY 16, 2010 PUBLICATION DATE NOT "IN OR AROUND MAY 2010."

Opposer's right to oppose accrued on February 16, 2010 not when Applicant vaguely asserts as "in or around May 2010." (Applicant's Response p. 8).

### REPLY B.4: THERE ARE NO FINANCIAL REMEDIES THROUGH THE TTAB

The Applicant's characterization of the Opposer as wishing to "cash-in" demeans these proceedings as the TTAB cannot provide any damage remedy. Among a handful of remedies, the Opposer may only stop the registration of the applications and or cancel a registration.

### REPLY B.5: THE APPLICANT/ASSIGNEE JUST COMPLETED ACQUISITION "DUE DILIGENCE" BUT CLAIM THAT IT DOES NOT HAVE CRUCIAL 'CHAIN OF TITLE' DOCUMENTS.

Applicant will have to provide 'documents' under its control, and its control only, to substantiate its date of first use of July 01, 2003; however, Applicant claims that it requires discovery to discover the documents it alone would possess. Further and amazingly, a mere six months after "conducting its due diligence in connection with the [multi-million dollar] acquisition, The Hain Celestial Group..." (Applicant's Response p. 8) and the Applicant do not have in their possession a chain of documents that perfect any alleged rights that Applicant assigned to Hain Gourmet, Inc in the acquisition (Assignment Reel/Frame 4290/0117 Oct., 05, 2010).

An other timing abnormality advanced by the Applicant is that immediately after Applicant was acquired by Hain Gourmet (“in or around May 2010”), the Opposer initiated these proceedings on May 12, 2010 to “cash in,” “less than one month later,” (Applicant’s Response p. 8) on a right that arose on Feb. 16, 2010.

**WHEREFORE**, Sensible Foods, LLC prays that the Board consider the Opposer’s motion in full with the above clarifications and corrections to contain the scope and depth of costly and time-consuming discovery.

Date March 15, 2011

Respectfully submitted,

Appearing *pro se*:

By: 

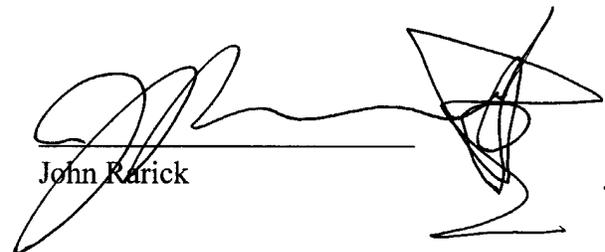
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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on this 15 day of March, 2011, I caused to be served via the United States Patent and Trademark Office’s Electronic System for Trademark Trials and Appeals (ESSTA) and via the US Postal Service, first-class postage prepaid, the following:

**REPLY TO APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO STRIKE CERTAIN DEFENSES**

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