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

Proceeding	91196938
Party	Defendant Malt-O-Meal Company
Correspondence Address	JOHN A CLIFFORD MERCHANT & GOULD P.C. PO BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES
Submission	Answer
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Date	11/02/2010
Attachments	ANSWER TO NOO_20101102145655.pdf ( 5 pages )(139880 bytes )

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

_____	)	
Kellogg North America Company,	)	
Opposer,	)	Opposition No. 91196938
	)	Serial No. 77/866,045
v.	)	
	)	
Malt-O-Meal Company,	)	
Applicant.	)	
_____	)	

**ANSWER TO NOTICE OF OPPOSITION**

COMES NOW the Applicant, Malt-O-Meal Company to Answer the Notice of Opposition. Any allegation not specifically admitted herein is denied. Applicant specifically denies any confusing similarity or damage to Opposer.

The numbered allegations are answered as follows:

1. Admitted.
2. It is admitted that Opposer now uses the terms FROSTED MINI-WHEATS and MINI-WHEATS as a trademark. The length of time used and the extent of such use is unknown by the Applicant and those allegations are denied.
3. It is admitted that Opposer claims ownership of the three-named registrations but Opposer has not made copies of those Certificates of Record in an appropriate way, therefore Applicant denies the remaining allegations and will leave Opposer to its proofs.

4. Applicant has no knowledge of any alleged licensees and therefore denies this allegation. Applicant denies that Opposer has a family of trademarks and denies that allegation.
5. Denied.
6. Denied.
7. It is admitted that Applicant filed an application for its mark FROSTED TUMBLE WHEATS on November 5, 2009 and the Application was assigned Serial No. 77/866,045 and that the application was published on April 13, 2010. The balance of the allegation is denied.
8. Denied.
9. Denied.

#### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted.
2. Applicant's mark is not confusingly similar to any trademark of Opposer.
3. Applicant's mark FROSTED TUMBLE WHEATS is a play on words with the words TUMBLE WEEDS and would immediately be recognized as such by consumers.
4. Each of Opposer's alleged marks is descriptive and weak. Opposer has no claim to either the word FROSTED, or the word WHEATS and the product of Opposer is frosted and is made of wheat. The two most

- prevalent ingredients in the Opposer's FROSTED MINI-WHEATS product are sugar and wheat.
5. Opposer has engaged in a practice of "trademark bullying" which is described as a trademark owner that uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow.
  6. According to research published by "TTAB Across the Board," Opposer filed the most TTA proceedings and extensions of time to oppose requests with the TTAB in 2009, and Opposer's trademark portfolio is far smaller than that of many others.
  7. Opposer has previously opposed a large number of applications filed by Applicant where the grounds of the opposition were dubious, weak, or exaggerated. Opposer is attempting to unfairly raise the cost of entry for Applicant to compete in the marketplace by filing this and other groundless oppositions with the TTAB.
  8. The longstanding and habitual practice of trademark bullying engaged in by the Opposer gives the Opposer unclean hands and bars relief to Opposer.
  9. Applicant is a small business that is harmed by Opposer's litigation tactics wherein Opposer attempts to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to the trademark owner.

10. Opposer is not damaged by the registration of the FROSTED TUMBLE WHEATS mark by the Applicant.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed on the merits and with prejudiced, Opposer taking nothing. Applicant further requests that its trademark application be advanced and receive a Notice of Allowance.

Please direct all correspondence to the attention of:

John A. Clifford  
Merchant & Gould P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-0910  
612-336-4616  
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Malt-O-Meal Company appoints; Brian H. Batzli, Reg. No. 32,960; John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Scott W. Johnston, Reg. No. 39,721; D. Randall King; Andrew S. Ehard; Christopher J. Schulte, Danielle I. Mattessich and Scott Oslick; of the firm of MERCHANT & GOULD P.C., its attorneys to prosecute this matter, and to transact all business in the Patent and Trademark Office connected therewith.

Respectfully submitted,  
Malt-O-Meal Company

By its Attorney,

Date: NOV 2, 2010



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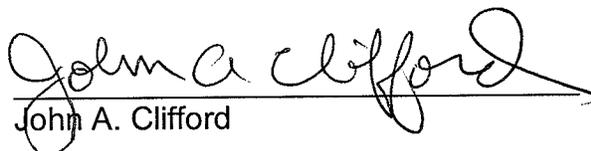
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer to Notice of Opposition was served on:

David A. Herdman  
Corporate Counsel  
Kellogg Company  
One Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016-3599

By first class mail, postage prepaid on this 2<sup>nd</sup> day of November 2010.

Date: NOV 2, 2010



John A. Clifford