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

Proceeding	91198224
Party	Defendant Juan Pablo Lopez
Correspondence Address	EDUARDO E DIEPPA DIEPPA LAW FIRM PA 2095 W 76TH ST HIALEAH, FL 33016 UNITED STATES edieppa@dieppalaw.com
Submission	Other Motions/Papers
Filer's Name	Eduardo E Dieppa III
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Signature	/Eduardo E Dieppa III/
Date	03/30/2011
Attachments	JUAN_PABLO_LOPEZ'S_RESPONSE_TO_ORDER_TO_SHOW_CAUSE.pdf (27 pages)(1869769 bytes)

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

LUBERSKI, INC., a California corporation and)
doing business as HIDDEN VILLA RANCH,)
)
Opposer,)
)
v.)
JUAN PABLO LOPEZ, an individual,)
)
Applicant.)
_____)

Opposition No. 91198224
Serial No. 77893578
Mark: DEFRESCURA
Publication Date: September 21, 2011

**APPLICANT, JUAN PABLO LOPEZ'S RESPONSE TO ORDER TO SHOW CAUSE
WHY DEFAULT SHOULD NOT BE ENTERED AGAINST APPLICANT**

Pursuant to *Fed. R. Civ. P. 55(c)*, Applicant, JUAN PABLO LOPEZ ("LOPEZ"), by and through his undersigned counsel, hereby move this Board to set aside the default entered against him for the reasons that follow.

1. This is an action for opposition to the application for a trademark registration sought by LOPEZ.
2. Applicant was served with Opposer's Notice of Opposition on January 18th, 2011. See Exhibit "A".
3. Applicant was given 40 days, until February 27th, 2011, to Answer Opposer's Notice of Opposition. See Exhibit "B".
4. Applicant did not file an Answer in time because he did not have the money needed to pay an Attorney to represent him in this matter until March 28, 2011. Applicant's money was tied up in a large shipment from Colombia. Although Applicant was aware of the Notice of Opposition, he had no funds available to begin defending the claim.

5. The Board entered a default against the Applicant on March 22, 2011. See Exhibit “C”.

6. In order to allow Applicant to begin defending the claim, Applicant’s attorney, Eduardo Dieppa III, has agreed to accept a reduced retainer to commence work on this matter.

7. Applicant became aware that a default had been entered against him and seeks the opportunity to defend the claims of Opposer on the merits. See Exhibit “C”.

8. The Court may set aside an entry of default for good cause, and Applicant has good cause because he did not have any funds available to hire an attorney in this matter until this week. *Fed. R. Civ. P. 55(c)*.

9. Applicant has a meritorious defense as reflected in his proposed Answer, which is attached as Exhibit “D”.

10. Accordingly, Applicant, JUAN PABLO LOPEZ, requests that the default not be entered against him so the case can be litigated on its merits. The law favors that cases be decided on the merits rather than on technicalities. According the Supreme Court of the United States, it is “contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.” 371 U.S. 178.

WHEREFORE, Applicant, JUAN PABLO LOPEZ, respectfully request that this Board enter an Order setting aside the default entered against him on March 22, 2011 and granting such relief as this Board finds just and necessary.

Respectfully submitted,

Dated: March 30, 2011

By: /Eduardo Dieppa III/
EDUARDO E. DIEPPA III
DIEPPA LAW FIRM, P.A.
Attorneys for JUAN PABLO LOPEZ
2095 West 76th Street
Hialeah, Florida 33016
Tel: 305-826-8266
Fax: 786-513-0687

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was faxed and mailed on the 30th day of March, 2011 to: **Darryl J. Horowitz, Esq.**, COLEMAN & HOROWITT, LLP, 499 West Shaw Avenue, Suite 116, Fresno, CA 93704.

By: /Eduardo Dieppa III/

EDUARDO E. DIEPPA III
DIEPPA LAW FIRM, P.A.

Attorneys for JUAN PABLO LOPEZ
2095 West 76th Street
Hialeah, Florida 33016
Tel: 305-826-8266
Fax: 786-513-0687

CERTIFICATE OF ELECTRONIC FILING

WE HEREBY CERTIFY that a true and correct copy of the foregoing is being filed electronically today, March 30, 2011, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

By: /Eduardo Dieppa III/

EDUARDO E. DIEPPA III
DIEPPA LAW FIRM, P.A.

Attorneys for JUAN PABLO LOPEZ
2095 West 76th Street
Hialeah, Florida 33016
Tel: 305-826-8266
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Exhibit "A"

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

LUBERSKI, INC., a California corporation and)
doing business as HIDDEN VILLA RANCH,)
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Opposer,)
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v.)
)
JUAN PABLO LOPEZ, an individual,)
)
Applicant.)
_____)

Opposition No. _____
Serial No. 77893578
Mark: DEFRESCURA
Publication Date: September 21, 2010

NOTICE OF OPPOSITION

Opposer, LUBERSKI, INC. dba HIDDEN VILLA RANCH ("HVR"), believes that it will be damaged by the registration of the mark DEFRESCURA, Application Serial Number 77893578, which was published for opposition on September 21, 2010, and, by and through its attorneys, hereby opposes the registration on the following grounds.

THE PARTIES

1. Opposer, HVR, is a corporation, duly organized under the laws of the State of California, with a principal place of business in the City of Fullerton, State of California.
2. On or about October 2, 2006, HVR purchased the trade names *Nest Fresh Eggs*, *Colorado Natural Eggs*, and *Cyd's Nest Fresh Eggs* from Nest Fresh Eggs, Inc., a Colorado corporation. All these names were used in connection with the sale of eggs.
3. In addition to the trade names above, HVR purchased the trademark *Nest Fresh*. This mark was registered with the USPTO on June 12, 2001, Registration No. 2,459,654 for

shell eggs. This trademark was first used on or about May 1, 1992, and first used in commerce on or about July 1, 1997. The registration was cancelled in 2008 because HVR inadvertently failed to file a Section 8 Statement of Use. However, HVR has not abandoned the use of this mark and has since applied to re-register the mark *Nest Fresh* in Class 29 for shell eggs and liquid eggs. This application has been assigned Serial No. 85108632 and is pending.

4. In January 2006, HVR also began using the mark *Nest Fresh Always 100% Cage Free*. On or about August 17, 2010, HVR filed a trademark application for registration for this mark. This application has been assigned Serial No. 85108814 and is pending.

5. The mark *Cyd's Nest Fresh* has been used for several years throughout the United States, but as of late 2010, HVR no longer uses "Cyd" as part of the mark.

6. Each of the aforementioned marks is used in connection with eggs, shell eggs, and liquid eggs.

7. HVR continues to use its marks *Nest Fresh*, *Nest Fresh Eggs*, and *Nest Fresh Always 100% Cage Free* throughout the United States for its products. Due to HVR's and its predecessors' exclusive and continued use of the *Nest Fresh* and *Nest Fresh Eggs* marks (collectively referred to as the "NEST FRESH MARKS"), for nearly eighteen (18) years, in connection with eggs, HVR's NEST FRESH MARKS have become distinctive as applied to such goods by reason of substantially exclusive use and continued use by HVR and its predecessors. The NEST FRESH MARKS have long been associated with HVR's and its predecessors' products.

8. HVR is engaged in the trade, marketing, advertising, sale, and promotion of its products throughout the United States. HVR's NEST FRESH MARKS are used in national

publications and advertisements in association with HVR's goods. HVR's products are sold across the country in states such as Florida, Wyoming, Colorado, California, and New Mexico and sold in stores such as Whole Foods Markets, Costco, and Albertsons.

9. Applicant, JUAN PABLO LOPEZ ("LOPEZ"), is an individual located in Weston, Florida. LOPEZ applied to register the mark *DEFRESCURA*.

PROCEDURAL HISTORY

10. LOPEZ applied to register the mark *DEFRESCURA* on December 15, 2009, in International Class 029 for fruit purees. The application was assigned Serial No. 77893578. LOPEZ claims he has used this mark since July 20, 2001, and first used this mark in commerce regulated by the United States as early as July 20, 2001.

11. LOPEZ claims only a standard character mark for the mark *DEFRESCURA*. On March 16, 2010, the USPTO examiner issued an Office Action requesting LOPEZ to provide an English translation of the mark. In response to this request, LOPEZ stated that the English translation of the mark is "Freshness." The USPTO examiner suggested that LOPEZ use the translation statement "of freshness." LOPEZ amended the application to include the English translation of the mark *DEFRESCURA* as "of freshness."

12. On or about September 21, 2010, LOPEZ's mark was published for opposition.

13. On or about October 8, 2010, HVR sent a cease and desist letter to LOPEZ notifying it of the potential infringement of its use of the mark. A copy of this letter is attached hereto as Exhibit "A."

14. HVR believes that it will be damaged by the registration of LOPEZ's mark when used in commerce with the class of goods applied for and it is likely to cause confusion, or to

cause mistake, or deceive others as to HVR's NEST FRESH MARKS for the same or similar goods.

15. Due to HVR's and its predecessors' long and continued use of the NEST FRESH MARKS, HVR's NEST FRESH MARKS will be damaged or diminished by the registration of LOPEZ's mark.

16. LOPEZ's mark is merely descriptive and is not subject to trademark registration and is similarly confusing to HVR's NEST FRESH MARKS. Further, HVR's use of its marks predates any use by LOPEZ of his mark, and his mark will cause dilution of HVR's marks. Therefore, LOPEZ's application for registration should be denied.

FIRST GROUND FOR OPPOSITION

17. HVR incorporates paragraphs 1 through 16 as though fully set forth herein.

18. LOPEZ's mark, as used in connection with goods, is merely descriptive pursuant to 15 U.S.C. § 1052(e).

19. LOPEZ's mark merely signifies the description of the goods, namely, fruit purees, and is not unique or fanciful. Simply using a Spanish translation of the mark does not give the mark distinctiveness or any unique meaning that would give the mark trademark protection. Further, LOPEZ has not asserted distinctiveness or that the mark has acquired a secondary meaning. For this reason, LOPEZ's application for registration should be refused.

SECOND GROUND FOR OPPOSITION

20. HVR incorporates paragraphs 1 through 19 as though fully set forth herein.

21. LOPEZ's mark closely resembles and incorporates HVR's NEST FRESH MARKS and is used in the same Class of Goods. The marks at issue have the same meaning:

Fresh. The overall impression of the NEST FRESH marks connotes freshness and/or products that are fresh. As such, the marks are similar in meaning and overall impression.

22. Further, HVR's products fall within the logical zone of expansion. Though HVR's NEST FRESH marks are used with shell eggs and liquid eggs, HVR's products line logically expands into the area of other goods such as fruit, vegetables, fruit purees, fruit juices, and other items within Class 29 and potentially other classes. HVR and LOPEZ also target the same consumers and trade channels. Registration of LOPEZ's mark therefore will likely cause confusion, mistake, or deceit within the meaning of 15 U.S.C. § 1052(d). Based on the foregoing, LOPEZ's registration should be refused.

THIRD GROUND FOR OPPOSITION

23. HVR incorporates paragraphs 1 through 22 as though fully set forth herein.

24. As set forth above, HVR and its predecessors have used the NEST FRESH MARKS exclusively and continuously as early as 1992. The mark NEST FRESH was registered in 2001 and continues to be used throughout the country. HVR's and its predecessors' products have long been associated with the NEST FRESH MARKS. HVR and its predecessors have achieved distinctiveness and renown for the NEST FRESH MARKS through extensive advertising, excessive sale of its products for almost two decades, and have been long recognized as one of the leading distributors of eggs and various egg products under their NEST FRESH MARKS. HVR's NEST FRESH MARKS are distinctive and nationally known and have been renowned prior to LOPEZ's use of his mark.

25. The goods in which the marks are connected are the same or substantially related. Both parties conduct business in competing markets and the registration of LOPEZ's mark will

therefore cause confusion or deceive consumers and likely dilute HVR's NEST FRESH MARKS.

26. Registration of LOPEZ's pending mark is likely to dilute the distinctive quality or blur the distinctiveness of HVR's NEST FRESH MARKS pursuant to 15 U.S.C. § 1063.

WHEREFORE, HVR prays for relief as follows:

1. The Board sustain HVR's opposition;
2. The registration of LOPEZ's application for the mark, DEFRESCURA, Serial No. 77893578, be refused; and
3. For such other relief that the Board may deem just and proper.

Respectfully submitted,

Dated: January 18, 2011

By: /Darryl J. Horowitz/
DARRYL J. HOROWITT
COLEMAN & HOROWITT, LLP
499 West Shaw Avenue, Suite 116
Fresno, California 93704
(559)-248-4820
dhorowitz@ch-law.com
*Attorneys for Luberski, Inc., a
California Corporation and dba
Hidden Villa Ranch*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Opposition to Application Serial No. 77893578, in re: Luberski, Inc., a California corporation and doing business as Hidden Villa Ranch, was forwarded by U.S. Express Mail by depositing the same with the U.S. Postal Service on this 18th day of January, 2011, to the attorney for Applicant at the following address:

Eduardo E. Dieppa, Esq.
Dieppa Law Firm, P.A.
2095 W. 76th Street
Hialeah, Florida 33016
edieppa@dieppalaw.com

/Christine English/
CHRISTINE ENGLISH

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition to registration of the mark in Application, Serial No. 77893578 is being filed electronically today, January 18, 2011, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

/Darryl J. Horowitz/
DARRYL J. HOROWITT

COLEMAN & HOROWITT, LLP

ATTORNEYS AT LAW

DARRYL J. HOROWITT

499 WEST SHAW, SUITE 116
FRESNO, CALIFORNIA 93704

TELEPHONE: (559) 248-4820
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WRITER'S E-MAIL
DHOROWITT@CH-LAW.COM

October 8, 2010

Via U.S. Mail and E-Mail

Eduardo E. Dieppa, Esq.
Dieppa Law Firm, P.A.
2095 W. 76th Street
Hialeah, FL 33016

Re: **Cease and Desist Use of Pending Mark**
Trademarks: "Defrescura"
App. Serial No.: 77893578
Our Client: Luberski, Inc., dba Hidden Villa Ranch

Dear Mr. Dieppa:

Our office represents Luberski, Inc. dba Hidden Villa Ranch ("HVR"). HVR is the owner of the mark "Nest Fresh." We are writing to ask your client to cease and desist use of the mark "Defrescura."

HVR applied for the mark, "Nest Fresh" in the International Class 029 for "eggs and liquid eggs." (Serial No. 85108632.) The mark "Nest Fresh" has been in use since May 1, 1992, and was first used in commerce in July 1, 1997. As such, our client has superior rights in this mark.

Mr. Juan Pablo Lopez filed a trademark application for Defrescura on December 15, 2009, alleging first use of the mark and first use in commerce as early as July 20, 2001. Defrescura is associated with International Class 029: fruit purees, which is in the same International Class of Goods 029, in relation to the goods and services, "shell eggs and liquid eggs."

Further, the English translation of Defrescura is "Of Freshness," which is similarly confusing to HVR's mark "Nest Fresh." Lastly, both marks use similar trade channels and similar purchasers only adding to the likelihood of confusion. Your client's pending mark was published for opposition on September 21, 2010.

Eduardo E. Dieppa, Esq.
October 8, 2010
Page 2

Due to the similarity of our client's mark and your client's pending mark, and the same class of the goods in which the marks are used, your client's pending marks infringes on our client's mark "Nest Fresh."

Before our client goes through the expense of formally opposing your client's application and seeking injunctive relief and damages for the use of our client's mark, we are writing to demand that your client cease and desist use of your client's mark, Defrescura. Please confirm that your client will do so within ten (10) days of the date of this letter. If we do not receive a response from you or your client within that time, we will assume that your client is not willing to cease the use of the proposed mark and we will have no other option than to oppose the application and further take legal action to enforce our client's rights. We thus look forward to your client's timely reply.

Thank you in advance for your prompt attention to this matter. Of course, if you have any questions, please call.

Very truly yours,

COLEMAN & HOROWITT, LLP

Darryl J. Horowitz

DARRYL J. HOROWITT

DJH\heo

cc: Client
Helen E. Omapas

Exhibit "B"

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 18, 2011

Opposition No. 91198224
Serial No. 77893578

EDUARDO E. DIEPPA
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Luberski, Inc. dba Hidden Villa
Ranch

v.

Lopez, Juan Pablo

Darryl J. Horowitz, Esq.
Coleman & Horowitz, LLP
499 W. Shaw Ave., Suite 116
Fresno, CA 93704
dhorowitz@ch-law.com

ESTTA388942

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVUE system: <http://ttabvue.uspto.gov/ttabvue/v?qs=91198224>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or

through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address:
<http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Time to Answer	2/27/2011
Deadline for Discovery Conference	3/29/2011
Discovery Opens	3/29/2011
Initial Disclosures Due	4/28/2011
Expert Disclosures Due	8/26/2011
Discovery Closes	9/25/2011
Plaintiff's Pretrial Disclosures	11/9/2011
Plaintiff's 30-day Trial Period Ends	12/24/2011
Defendant's Pretrial Disclosures	1/8/2012
Defendant's 30-day Trial Period Ends	2/22/2012
Plaintiff's Rebuttal Disclosures	3/8/2012
Plaintiff's 15-day Rebuttal Period Ends	4/7/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or

defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking

(72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

Exhibit "C"

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 22, 2011

Opposition No. 91198224

Luberski, Inc. DBA Hidden
Villa Ranch

v.

Juan Pablo Lopez

Tina Craven, Paralegal Specialist:

Answer was due in this case on February 27, 2011.

Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until **thirty days** from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

Exhibit "D"

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

LUBERSKI, INC., a California corporation and)
doing business as HIDDEN VILLA RANCH,)
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Applicant.)
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Opposition No. 91198224
Serial No. 77893578
Mark: DEFRESCURA
Publication Date: September 21, 2011

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, JUAN PABLO LOPEZ, by and through his undersigned counsel, hereby files this Answer and Affirmative Defenses to Opposer, LUBERSKI, INC. DBA HIDDEN VILLA RANCH'S Notice of Opposition and states as follows:

1. Applicant admits the allegations contained in paragraph 1 of Opposer's Notice of Opposition for jurisdictional purposes only.
2. Applicant is without knowledge as to the allegations contained in paragraph 2 of Opposer's Notice of Opposition and demands strict proof thereof.
3. Applicant denies the allegations contained in paragraph 3 of Opposer's Notice of Opposition and demands strict proof thereof.
4. Applicant denies the allegations contained in paragraph 4 of Opposer's Notice of Opposition and demands strict proof thereof.
5. Applicant denies the allegations contained in paragraph 5 of Opposer's Notice of Opposition and demands strict proof thereof.

6. Applicant denies the allegations contained in paragraph 6 of Opposer's Notice of Opposition and demands strict proof thereof.

7. Applicant denies the allegations contained in paragraph 7 of Opposer's Notice of Opposition and demands strict proof thereof.

8. Applicant denies the allegations contained in paragraph 8 of Opposer's Notice of Opposition and demands strict proof thereof.

9. Applicant admits the allegations contained in paragraph 9 of Opposer's Notice of Opposition.

10. Applicant admits the allegations contained in paragraph 10 of Opposer's Notice of Opposition.

11. Applicant denies the allegations contained in paragraph 11 of Opposer's Notice of Opposition and demands strict proof thereof.

12. Applicant admits the allegations contained in paragraph 12 of Opposer's Notice of Opposition.

13. Applicant admits the allegations contained in paragraph 13 of Opposer's Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of Opposer's Notice of Opposition and demands strict proof thereof.

15. Applicant denies the allegations contained in paragraph 15 of Opposer's Notice of Opposition and demands strict proof thereof.

16. Applicant denies the allegations contained in paragraph 16 of Opposer's Notice of Opposition and demands strict proof thereof.

Count 1

17. Applicant denies the allegations contained in paragraph 17 of Opposer's Notice of Opposition and demands strict proof thereof.

18. Applicant denies the allegations contained in paragraph 18 of Opposer's Notice of Opposition and demands strict proof thereof.

19. Applicant denies the allegations contained in paragraph 19 of Opposer's Notice of Opposition and demands strict proof thereof.

Count 2

20. Applicant denies the allegations contained in paragraph 20 of Opposer's Notice of Opposition and demands strict proof thereof.

21. Applicant denies the allegations contained in paragraph 21 of Opposer's Notice of Opposition and demands strict proof thereof.

22. Applicant denies the allegations contained in paragraph 22 of Opposer's Notice of Opposition and demands strict proof thereof.

Count 3

23. Applicant denies the allegations contained in paragraph 23 of Opposer's Notice of Opposition and demands strict proof thereof.

24. Applicant denies the allegations contained in paragraph 24 of Opposer's Notice of Opposition and demands strict proof thereof.

25. Applicant denies the allegations contained in paragraph 25 of Opposer's Notice of Opposition and demands strict proof thereof.

26. Applicant denies the allegations contained in paragraph 26 of Opposer's Notice of Opposition and demands strict proof thereof.

WHEREFORE, having fully answered the Opposer's Notice of Opposition, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety and for such other relief as this Board deems just and proper.

First Affirmative Defense

The Opposer's mark, NEST FRESH, is regulated under 15 U.S.C. § 1125(c) because it qualifies as a famous mark under (c)(A) of that provision. Therefore, as applicable to this case, Opposer would be entitled to an injunction against Applicant if Applicant's mark was likely to cause dilution by blurring of NEST FRESH. The statute states that all relevant factors may be considered to determine if the mark would be likely to cause dilution, including: (i) the degree of similarity between the marks, (ii) the degree of distinctiveness of the famous mark, (iii) the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark, (iv) the degree of recognition of the famous mark, (v) whether the user of the mark intended to create an association with the famous mark, and (vi) any association between the two marks. 15 U.S.C. § 1125(c)(2)(B). In this case, it is clear that when considering all relevant factors, including those listed, Applicant's mark is not at all likely to cause dilution by blurring of NEST FRESH. A consumer's recognition of the NEST FRESH mark will not be impacted by or diluted by the entry into the marketplace of DEFRESCURA's fruit purees.

Respectfully submitted,

Dated: March 30, 2011

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was faxed and mailed on the 30th day of March, 2011 to: **Darryl J. Horowitz, Esq.**, COLEMAN & HOROWITT, LLP, 499 West Shaw Avenue, Suite 116, Fresno, CA 93704.

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CERTIFICATE OF ELECTRONIC FILING

WE HEREBY CERTIFY that a true and correct copy of the foregoing is being filed electronically today, March 30, 2011, on the Electronic System for Trademark Trials and Appeals for the United States Patent and Trademark Office.

By: /Eduardo Dieppa III/

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