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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
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Submission	Answer
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Date	03/30/2011
Attachments	ANSWER_AND_AFFIRMATIVE_DEFENSES_(5).pdf (7 pages)(428187 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

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

By: /Eduardo Dieppa III/
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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.

By: /Eduardo Dieppa III/

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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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