

ESTTA Tracking number: **ESTTA397041**

Filing date: **03/09/2011**

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

Proceeding	91198382
Party	Defendant Kusmi Tea
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Submission	Answer
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Date	03/09/2011
Attachments	Answer.pdf (5 pages)(25593 bytes)

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

In the matter of trademark application Serial No. 79072740
Filed by Kusmi Tea
For the mark BE COOL
Published in the Official Gazette(Trademarks) on September 28, 2010

The Republic of Tea, Inc.,		
Opposer,		Opposition No. 91198382
v.		
Kusmi Tea,		Serial No. 79072740
Applicant.		

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

ANSWER TO NOTICE OF OPPOSITION

Applicant, Kusmi Tea, acting by and through the undersigned counsel, hereby submits its Answer to Opposer The Republic of Tea, Inc.'s Notice of Opposition. For the reasons set forth below, the Board should dismiss the Opposition and find that Kusmi Tea is entitled to registration of United States Trademark Application Serial No. 79072740 for BE

COOL (the “Application”) for “Coffee, tea, cocoa, artificial coffee, pastry, cookies and biscuits, beverages made with cocoa, coffee, or tea” in International Class 30.

Applicant, Kusmi Tea submits its Answer to the Notice of Opposition, as follows:

1. Applicant admits the allegations in Paragraph 1 of the Notice of Opposition.
2. Insofar as the existence of the applications and registrations identified in the Notice of Opposition, Applicant admits the allegations in Paragraph 2 of the Notice of Opposition. With respect to the validity thereof, Applicant has no knowledge or information sufficient to form a belief and accordingly denies the same.
3. Applicant admits the allegations in Paragraph 3 of the Notice of Opposition.
4. Applicant has no knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 of the Notice of Opposition and accordingly denies the allegations in this paragraph.
5. Applicant has no knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 of the Notice of Opposition and accordingly denies the allegations in this paragraph..

6. Applicant has no knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 of the Notice of Opposition and accordingly denies the allegations in this paragraph..

7. With respect to Paragraph 7 of the Notice of Opposition, Applicant admits that it filed U.S. Trademark Application Serial No. 79072740 for registration of the mark BE COOL for “Coffee, tea, cocoa, artificial coffee, pastry, cookies and biscuits, beverages made with cocoa, coffee, or tea,” that said application was published in the Official Gazette(Trademarks) on September 28, 2011, and that Opposer obtained an extension of time and that the instant Opposition was filed. As to any remaining allegations included in this Paragraph, express or implied, Applicant has no knowledge or information sufficient to form a belief and accordingly denies the same.

8. Insofar as the Opposer is listed as registrant in U.S. Registration No. 3269578 and that “tea” comprises the identification of goods, Applicant admits such allegation in Paragraph 8 of the Notice of Opposition. With respect to the validity thereof, Applicant has no knowledge or information sufficient to form a belief and accordingly denies the same

9. With respect to Paragraph 9 of the Notice of Opposition, Applicant admits that U.S. Trademark Application Serial No. 79072740 includes, inter alia, “tea” in the identification of goods. Applicant admits it has used the mark identified in the aforesaid application for “tea” in United States commerce since October, 2009. With respect to the

allegation the parties' goods will share the same channels of trade, Applicant has no knowledge or information sufficient to form a belief and accordingly denies the same. With respect to the allegation that Applicant's mark is likely to be confused with the Opposer's mark, Applicant denies this allegation.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

11. Applicant admits that its mark begins with the word "BE"; as to the remaining allegations in Paragraph 11 Applicant denies the same.

12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposer's claims are barred by laches, acquiescence, waiver, and estoppel.

2. Opposer fails to state a claim on which relief may be granted.

3. There is no likelihood of confusion, mistake, or deception between the Applicant's mark and the pleaded marks of the Opposer due to differences between the services offered by the parties, and the different trade channels used by the parties.

4. Applicant will assert any other affirmative defenses that may be developed throughout discovery and/or testimony periods in this proceeding.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, that United States Application Serial No. 79072740 be allowed that a Notice of Allowance be issued forthwith, and that the Board grant Kusmi Tea such other and further relief as the Board deems just and appropriate.

Respectfully Submitted,

Date: March 9, 2011

/George A. Pelletier, Jr., Esq./

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Michelle C. Burke and Ulrika E. Mattson by mailing said copy on March 9, 2011, via First Class Mail, postage prepaid to Michelle C. Burke and Ulrika E. Mattson, both of McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois, 60606.

/ George A. Pelletier, Jr., Esq /

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Attorney for Applicant