

ESTTA Tracking number: **ESTTA400204**

Filing date: **03/28/2011**

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

Proceeding	91198629
Party	Defendant Huang, Edwyn C.
Correspondence Address	HUANG, EDWYN C. 20 ORCHARD ST APT 1F NEW YORK, NY 10002-6264 eddie@baohausnyc.com
Submission	Answer
Filer's Name	Linda L. Partmann
Filer's e-mail	lpartmann@orrick.com
Signature	/Linda L. Partmann/
Date	03/28/2011
Attachments	Answer.PDF (5 pages)(175063 bytes)

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

In the Matter of Application No. 85044473

MOBI MUNCH, INC., Opposer, v. EDWYN C. HUANG, Applicant.	ANSWER TO NOTICE OF OPPOSITION Opposition No. 91198629
--	--

ANSWER TO NOTICE OF OPPOSITION

Applicant, Edwyn C. Huang (“Applicant”), for its Answer to the Notice of Opposition (“Answer”) in the above-captioned matter responds to the Notice of Opposition (“Opposition”) filed by Opposer Mobi Munch, Inc. (“Opposer”) as follows:

Applicant lacks sufficient information on which to form a belief as to the truth of Opposer’s allegation in the unnumbered introductory paragraph of the Opposition that Opposer believes it will be damaged by the registration of the above-identified mark and on that basis denies that allegation. Applicant denies the allegation in the unnumbered introductory paragraph of the Opposition that Applicant has failed to use the mark in interstate commerce.

With respect to the individually numbered paragraphs of the Opposition, Applicant answers as follows:

1. Applicant admits that Applicant filed an application for registration of the mark CHAIRMAN BAO on May 20, 2010 as a Section 1(a), use application, which application was assigned No. 85/044,473. Except as expressly admitted, Applicant denies the allegations of Paragraph 1.

2. Applicant admits that Applicant identified the mark as the “[n]ame of [an] original food item.” Applicant admits that Applicant stated, in the application, that: “I have been using the name Chairman Bao to identify my special sandwich that I sell,” and that Applicant attached as a specimen a copy of the menu with the explanation that “[t]his is the menu for my restaurant Baohaus where I sell the Chairman [B]ao.” Except as expressly admitted, Applicant denies the allegations of Paragraph 2.

3. Applicant admits that Applicant stated, in the application, that Applicant first used the mark in commerce “[a]t least as early as 12/24/2009.” Except as expressly admitted, Applicant denies the allegation of Paragraph 3.

4. Applicant is informed and believes and on that basis admits that Opposer filed United States Trademark Application Serial No. 85/044,933 for the mark CHAIRMAN BAO on May 21, 2010 in class 35 for “[m]obile food kiosk services; [m]obile street vendor services featuring food and drink.” Except as so admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 and on that basis denies them.

5. Paragraph 5 states a legal conclusion to which no response is required. To the extent that Paragraph 5 does not state a legal conclusion, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and on that basis denies them.

6. Applicant denies each and every allegation in Paragraph 6.

7. Applicant denies each and every allegation in Paragraph 7.

8. Applicant lacks sufficient information on which to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies each and every one of them.

9. Applicant re-alleges and incorporates by reference herein its response to paragraph 4 above. Except as so admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 and on that basis denies them.

10. Applicant is informed and believes and on that basis admits that the United States Patent & Trademark Office issued an Office Action on September 9, 2010, identifying U.S. Application Serial No. 85/044,473, and finding that “a potentially conflicting mark in a prior-filed pending application may present a bar to registration.” Except as so admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10 and on that basis denies them.

11. Applicant is informed and believes and on that basis admits that Opposer filed a response to the United States Patent & Trademark Office’s September 9, 2010 Office Action on October 20, 2010. Except as so admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11 and on that basis denies them.

12. Applicant is informed and believes and on that basis admits that the United States Patent & Trademark Office issued a Suspension Letter on November 16, 2010. Except as so admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11 and on that basis denies them.

13. Applicant lacks sufficient information on which to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies each and every one of them.

AFFIRMATIVE DEFENSES

1. Opposer’s request for relief is barred because Opposer fails to state a claim upon which relief can be granted.

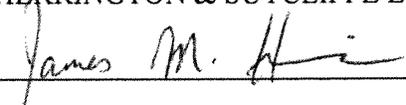
2. Opposer's request for relief is barred because Applicant has served Chairman Baos to interstate customers and have been made and consumed both within New York City, a major city whose metropolitan statistical area encompasses multiple states, and have been mentioned in online publications with a global audience.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Dated: March 28, 2011

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____

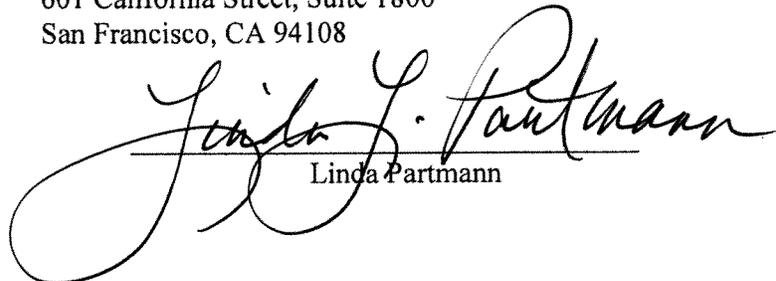

James M. Hsiao
51 West 52nd Street
New York, New York 10019-6142
(212) 506-3787
Attorney for Applicant
Edwyn C. Huang

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION upon Opposer by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on March 28, 2011, addressed as follows:

Diane J. Mason
Bullivant Houser Bailey PC
601 California Street, Suite 1800
San Francisco, CA 94108

Dated: March 28, 2011


Linda Partmann