

ESTTA Tracking number: **ESTTA419747**

Filing date: **07/14/2011**

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

Proceeding	91200575
Party	Defendant Wiesen, Kenneth B., Kenneth B. Wiesen
Correspondence Address	WIESEN, KENNETH B. 36 FARMSTEAD LN BROOKVILLE, NY 11545-2634 wiesenlaw@gmail.com
Submission	Answer
Filer's Name	Kenneth B. Wiesen
Filer's e-mail	wiesenlaw@gmail.com
Signature	/Kenneth B. Wiesen/
Date	07/14/2011
Attachments	Applicant's Answer to Opposition.pdf (4 pages)(182231 bytes)

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

Hershey Chocolate & Confectionery
Corporation and Hershey Company,

Opposers,

v.

KENNETH B. WIESEN,

Applicant.

Opposition No.: 912005757

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Kenneth B. Wiesen, *pro se*, hereby submits his Answer to the Notice of Opposition filed by Opposers, Hershey Chocolate & Confectionery Corporation and the Hershey Company, (against Application for Registration of Kenneth B. Wiesen's Trademark, MILKSHAKE, Serial no: 85221585, filed January 19, 2011 and published in the Official Gazette of June 14, 2011 and Kenneth B. Wiesen's Trademark, MILK SHAKE, Serial No: 8521042, filed January 5th, 2011 and published in the Official Gazette of June 14, 2011), pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly, denies the allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant denies each and every allegation contained therein except admits that the merely descriptive word "MILKSHAKE" has been listed on the face of a number of the Opposers candy wrappers, including its Kit Kat and Whoppers candy products which merely describes the taste, flavor and/or characteristic of the candy product.

3. Answering paragraph 3 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

4. Answering paragraph 4 of the Notice of Opposition, Applicant denies each and every allegation contained therein except admits that Applicant filed an application for registration of the mark MILKSHAKE for “candy; candy bars; candy with caramel; candy with cocoa; chocolate candies; International Class 30 for Application Serial No. 85221585;” and Applicant filed an application for registration for “candy; candy bars and International Class 30 for Application Serial No: 85210942.”

5. Answering paragraph 5 of the Notice of Opposition, Applicant denies each and every allegation contained therein except admits that on March 4, 2011, Hershey filed an application, Serial No. 85257980 to register MILKSHAKE for “candy” while falsely alleging use in commerce and selecting a filing basis under Section 1(a) and that such application was suspended pending the disposition of Application Serial No(s). 85221585 and 85210942 and that a Letter of Protest filed against Trademark Application No. 85257980 was received in the U.S. Patent and Trademark Office on April 22, 2011 which was accepted because it submitted evidence of the type which may given to an examining attorney for consideration during ex parte examination and that such evidence was received and reviewed by the examining attorney on June 2, 2011, the examining attorney thereafter performed an X Search search on June 6, 2011 and on June 14, 2011 a note to the file revealed that the protest evidence was reviewed and discussed with the managing attorney.

6. Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

8. Answering paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation contained therein and Applicant further denies that registration of the marks Serial No(s). 85221585 and 85210942 will confuse, cause mistake or deceive consumers as to the source/origin of Applicant’s goods or that Applicant’s goods are associated with, sponsored by, approved by or otherwise related to or affiliated with Opposers.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

10. Answering paragraph 10 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

FURTHERMORE, Applicant sets forth the following in support of its position:

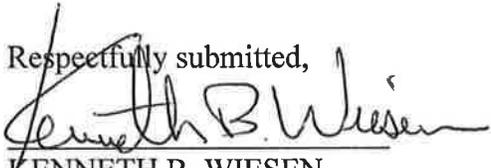
11. Any use by Opposers of the term "MILKSHAKE" on their "Whoppers," "Kit Kat," or other candy wrappers as alleged by Opposers has not distinguished those goods upon which it is listed from the goods and services of others and contrarily is non-distinctive and merely describes the taste, flavor and/or characteristic of the Whoppers, Kit Kat or other candy product.

12. Applicant further affirmatively alleges there is no likelihood of confusion, mistake or deception because, *inter alia*, any prior use by Opposers as Opposers allege, was solely the use of a merely descriptive, common term, describing the taste, flavor and/or characteristic of the candy product contained in the package.

13. Applicant further affirmatively alleges that Opposers should be estopped from opposing Applicant's marks as such opposition is part of a continuing scheme of fraud in applying for and renewing the MILKSHAKE mark and other similar marks. Such activities include, *inter alia*, Opposers actions in Registration Nos. 1273766, 1669640 and 1690384 and as further evidenced by Cancellation Proceeding No. 92053727.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board denies the Opposition and permits registration of Applicant's proposed marks in Application Serial Nos. 85221585 and 85210942 in the United States Patent and Trademark Office.

Dated: July 14, 2011
Carle Place, NY

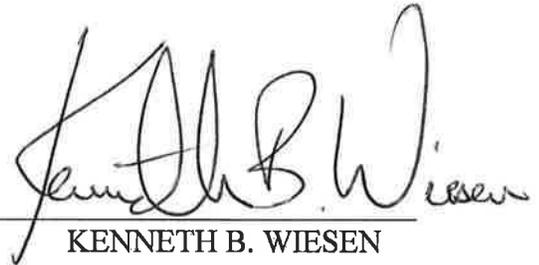
Respectfully submitted,
By: 
KENNETH B. WIESEN
Pro Se
1 Old Country Rd. Ste. 360b
Carle Place, NY 11514
(516) 835-500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the ANSWER TO NOTICE OF OPPOSITION has been served on the following by delivering said copy on July 14th, 2011 via U.S. First Class Mail, postage prepaid, to counsel for Opposers at the following address:

Paul C. Llewyn
KAYE SCHOLER, LLP
425 Park Avenue
New York, New York 10022

John P. Rynkiewicz
KAYE SCHOLLER, LLP
The McPherson Building
901 Fifteenth Street, N.W.
Washington, DC 20005



KENNETH B. WIESEN