

ESTTA Tracking number: **ESTTA443713**

Filing date: **11/30/2011**

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

Proceeding	91202219
Party	Defendant LEVILLE, KEVIN
Correspondence Address	TRISTRAM R. FALL, III FOX ROTHSCHILD LLP P.O. BOX 5231 PRINCETON, NJ 08543-5231 ipdocket@foxrothschild.com
Submission	Answer
Filer's Name	Scott D. Woldow
Filer's e-mail	sdwoldow@sgrlaw.com
Signature	/SW/
Date	11/30/2011
Attachments	TRADEMARK 1.PDF (5 pages)(52312 bytes)

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

In the Matter of Application Serial No. 77/868,068

Eat Right Foods Ltd.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91202219
)	
Leville, Kevin)	
)	
Applicant.)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Now comes Applicant, Kevin Leville (“Applicant”), and answers the Notice of Opposition of Eat Right Foods Ltd., (“Opposer”) as follows:

Applicant denies the allegation in the first unnumbered paragraph that Opposer will be damaged by the registration of the mark EAT RIGHT AMERICA in Application Serial No. 77/868,068.

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
7. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
9. Applicant denies the allegations of paragraph 9 of the Notice of Opposition.
10. Applicant admits the allegations of paragraph 10 of the Notice of Opposition.
11. Applicant admits the allegations of paragraph 11 of the Notice of Opposition.
12. Applicant admits the allegations of paragraph 12 of the Notice of Opposition.
13. Applicant denies the allegations of paragraph 13 of the Notice of Opposition. The goods in Class 16 have been omitted.

14. Applicant admits the allegations of paragraph 14 of the Notice of Opposition.
15. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
16. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
17. Applicant repeats and restates its responses set forth to paragraphs 1 through 16 as though set forth herein.
18. Applicant denies the allegations of paragraph 18 of the Notice of Opposition.
19. Applicant denies the allegations of paragraph 19 of the Notice of Opposition.
20. Applicant denies the allegations of paragraph 20 of the Notice of Opposition.
21. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore denies the same.
22. Applicant denies the allegations of paragraph 22 of the Notice of Opposition.
23. Applicant denies the allegations of paragraph 23 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's Mark and the pled marks of Opposer are not confusingly similar.

Second Affirmative Defense

Opposer is not likely to be damaged by registration of Application Serial No. 77/868,068.

Third Affirmative Defense

Any rights Opposer may have in its asserted marks are limited and narrow in scope of protection and, therefore no likelihood of confusion exists between Opposer's marks as applied to Opposer's goods and Applicant's mark covered by Application Serial No. 79/868,068 as applied to Applicant's goods.

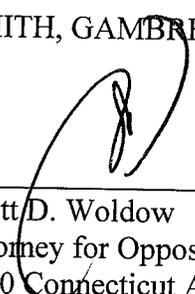
Fourth Affirmative Defense

Applicant reserves the right to raise additional defenses that are not known at this time, but may become known through the course of discovery and this proceeding.

WHEREFORE, Applicant requests that Opposition No. 91202219 be dismissed with prejudice and that the mark which is the subject of Application Serial No. 77/868,068 be registered.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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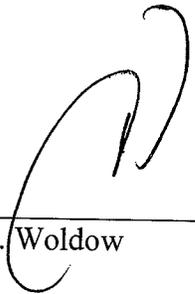
CERTIFICATE OF SERVICE

I, Scott D. Woldow, counsel for Kevin Leville, do hereby certify that APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served upon opposer by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Simone M. Katz-O'Neill
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111

A courtesy copy is being sent by email.

This 30th day of November, 2011



Scott D. Woldow