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

Proceeding	91208141
Party	Defendant MARQUEZ BROTHERS INTERNATIONAL, INC.
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Date	12/28/2012
Attachments	Answer to Opposition - CASERA.pdf (6 pages)(1074555 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application:

Serial No.: 85/430918
Filed: September 23, 2011
Mark: CASERA

GOYA FOODS, INC. Opposer, v. MARQUEZ BROTHERS INTERNATIONAL, INC. Applicant.	Opposition No. 91208141 APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Marquez Brothers International, Inc., a California corporation with a principal business address of 5801 Rue Ferrari, San Jose, CA 95138, hereby answers the Notice of Opposition of Goya Foods, Inc. as follows:

1. Applicant admits that U.S. Patent and Trademark Office records list Goya Foods, Inc. as the current owner of trademark registrations for CASERITA and CASERA for chicken croquettes and processed vegetables respectively. Applicant lacks sufficient information to enable it to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Notice of Opposition, and on that basis denies same.

2. Applicant denies that its chorizo, longaniza, deli meats, namely, hams, turkey are substantially identical to or generally related to Opposer's chicken croquettes or processed vegetables. Applicant lacks sufficient information to enable it to form a belief as to the truth of the remaining allegations of Paragraph 2 of the Notice of Opposition, and on that basis denies same.

3. Applicant admits that U.S. Patent and Trademark Office records list Goya Foods, Inc. as the current owner of trademark registrations for CASERITA and CASERA for chicken croquettes and processed vegetables respectively. Applicant lacks sufficient information to enable it to form a belief as to the truth of the remaining allegations of Paragraph 3 of the Notice of Opposition, and on that basis denies same.

4. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition, and on that basis denies same.

5. Applicant admits that U.S. Patent and Trademark Office records indicate that Reg. No. 2,740,494 for CASERA for processed vegetables and Reg. No. 3,040,516 for CASERITA for chicken croquets are incontestable and that Goya Foods, Inc. is listed as the current owner thereof.

6. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 6 of the Notice of Opposition, and on that basis denies same.

7. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 7 of the Notice of Opposition, and on that basis denies same.

8. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 8 of the Notice of Opposition, and on that basis denies same.

9. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 9 of the Notice of Opposition, and on that basis denies same.

10. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 10 of the Notice of Opposition, and on that basis denies same.

11. Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 11 of the Notice of Opposition, and on that basis denies same.

12. [10.] Applicant denies the allegations of Paragraph 12 (incorrectly numbered as Paragraph 10) of the Notice of Opposition.

13. [11.] Applicant denies that its CASERA mark is confusingly similar to Opposer's CASERITA or CASERA marks.

14. [12.] Applicant admits that the term "caserita" in the Spanish language is the diminutive equivalent of the term "casera". By way of a further answer, "casera" is the feminine form of the masculine adjective "casero," both meaning "domestic" or "homemade".

15. [13.] Applicant denies that its chorizo, longaniza, deli meats, namely, hams, turkey are substantially related in part or generally related in part to Opposer's chicken croquettes or processed vegetables. Applicant admits that its use of CASERA in connection with its goods is without the consent or permission of Opposer. Applicant does not require consent or permission from Opposer to use its CASERA mark.

16. [14.] Applicant denies the allegations of Paragraph 16 (incorrectly numbered as Paragraph 14) of the Notice of Opposition.

17. [15.] Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 17 (incorrectly numbered as Paragraph 15) of the Notice of Opposition, and on that basis denies same.

18. [16.] Applicant lacks sufficient information to enable it to form a belief as to the truth of the allegations of Paragraph 18 (incorrectly numbered as Paragraph 16) of the Notice of Opposition, and on that basis denies same.

19. [17.] Applicant denies the allegations of Paragraph 19 (incorrectly numbered as Paragraph 17) of the Notice of Opposition.

20. [18.] Applicant denies the allegations of Paragraph 20 (incorrectly numbered as

Paragraph 18) of the Notice of Opposition.

21. [19.] Applicant denies the allegations of Paragraph 21 (incorrectly numbered as Paragraph 19) of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. As a first affirmative defense, the Notice of Opposition fails to state a claim upon which relief can be granted to Opposer.

2. As a second affirmative defense, Opposer's claims for relief are barred by the doctrine of laches.

3. As a third affirmative defense, Opposer has waived any claims against Applicant arising out of the matters alleged in the Notice of Opposition.

4. As a fourth affirmative defense, Opposer is estopped from asserting any claims against Applicant arising out of the matters alleged in the Notice of Opposition.

5. As a fifth affirmative defense, there is no likelihood of consumer confusion, mistake or deception between Opposer's CASERITA or CASERA marks and Applicant's CASERA mark, as evidenced by the Parties' concurrent use of their respective marks in connection with Class 29 goods. Opposer states that it has used its CASERA mark since 1979 and its CASERITA mark since 1972. Applicant began use of its CASERO mark in 1977 in connection with cheese and is the owner of incontestable Reg. No. 1,934,691 for CASERO for cheese in class 29. Applicant began use of its CASERA mark in 1994 in connection with cheese and dairy products and in 2002 for flour, corn flour, instant corn flour mix and is the owner of Reg. No. 3,720,632 for CASERA for same in classes 29 and 30. In the nearly twenty years of concurrent use of the parties' respective marks there has been no evidence of confusion, deception or mistake among consumers or others.

6. As a sixth affirmative defense, Opposer's claims are barred or must fail in part because, to the extent that Opposer is, *arguendo*, successful in demonstrating that there is a likelihood of confusion between the Parties' marks, Applicant has priority over Opposer's CASERA mark by virtue of its use of CASERO since as early as 1977 .

WHEREFORE, Applicant requests that the Notice of Opposition be denied in all respects and the application be approved for registration.

Dated: December 28, 2012

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON, P.C.

By _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was sent to attorneys for Opposer this day by first class mail, postage prepaid, to the following address:

Stephen L. Baker
Ryan A. McGonigle
Baker and Rannells PA
575 Route 28
Raritan, NJ 08869

Dated: December 28, 2012

B.C. Dunne

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