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

Proceeding	91208987
Party	Defendant Daryll DeSantis
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Submission	Answer
Filer's Name	David A. Mech
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Signature	/s/ David A. Mech, Esq.
Date	03/02/2013
Attachments	coqui cola answer to opposition.pdf (4 pages)(70121 bytes)

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

IN THE MATTER OF U.S. APPLICATION SERIAL NO. 85/604733
Mark: COQUI COLA
Filed: APRIL 22, 2012
Published: September 25, 2012

THE COCA-COLA COMPANY.

Opposer, Opposition No. 91208987

v.

Daryll DeSantis DBA Coqui Cola

Applicant

ANSWER

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 herein and accordingly denies the allegations.
2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
7. Admitted.
8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
9. Admitted.
10. Answering paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
11. Denied.
12. Denied, the Applicant is offering coconut-flavored cola. The opposer offers carbonated beverages and syrup.
13. Denied.
14. Denied.
15. Denied
16. Denied.
17. Denied.

18. Answering paragraph 18 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained herein and accordingly denies the allegations.
19. The Applicant affirmatively alleges its mark is protected by the doctrine of fair use as it is descriptive of the ingredients, which make up Coqui Cola, the word Coqui having the meaning "coconut" in Spanish, resulting in Coconut Cola. Just as Coca Cola contains the word describing the dried coca leave which one of the original ingredients of Coca Cola, Coqui describes the main ingredient of the beverage, coconut, the word cola being generic.
20. The Applicant further affirmatively alleges its mark is protected, as it is distinctive from the word Coca Cola. The Coqui is the national symbol of Puerto Rico. It is a frog that lives in palm trees (hence the name coqui or coconut). Originally found only in Puerto Rico, the Coqui has been transplanted to Florida and Hawaii. It makes a distinctive sound that is recognized throughout the world and lulls millions of people to sleep. The words Coqui Cola give Latinos a sense of pride in having their own drink, not Coca Cola's drink.
21. The Applicant further affirmatively alleges its mark was found not to infringe on any other mark by the examiner employed by the Trademark Office.
22. The Applicant further affirmatively alleges the Opposing party is precluded from asserting this action as it is barred by the doctrine of Res Judicata.
23. The Applicant further affirmatively alleges the Opposing party is precluded from asserting this action as it is barred by the doctrine of Collateral Estoppel..

24. The Applicant further affirmatively alleges the Opposing party is precluded from asserting this action as it is barred by the expiration of the statute of limitations and/or laches and is time barred.

WHEREFORE, the applicant prays that the registration for Coqui Cola be allowed, and Opposer's Notice of Opposition be denied.

Applicant,
By his attorney,

Dated: March 2, 2013

/s/ David Mech

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CERTIFICATE OF SERVICE

I, David A. Mech, hereby certify I served the above Answer on all parties of record through counsel, Jessica Lewis, by email and first-class mail, postage pre-paid this 2nd day of March 2013.

/s/ David A. Mech