

ESTTA Tracking number: **ESTTA573766**

Filing date: **11/27/2013**

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

Proceeding	91212258
Party	Defendant Tabacalera El Artista S.R.L.
Correspondence Address	Darren S. Rimer Rimer & Mathewson LLP 30021 Tomas, Suite 300 Rancho Santa Margarita, CA 92688 UNITED STATES trademarks@rimermath.com
Submission	Answer
Filer's Name	Darren S. Rimer
Filer's e-mail	trademarks@rimermath.com
Signature	/Darren S. Rimer/
Date	11/27/2013
Attachments	answer.pdf(202127 bytes)

Case **TABAC-002M**
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Top Tobacco L.P.,)	Opposition No. 91212258
)	
Opposer,)	Serial No.: 85/798,713
)	
vs.)	Mark: P.O.P.
)	
Tabacalera El Artista S.R.L.,)	
)	
Applicant.)	
)	
_____)	

ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

Tabacalera El Artista S.R.L. ("Applicant") hereby responds to and answers the Notice of Opposition filed by Opposer herein as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 1 of the Notice of Opposition, and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 2 of the Notice of Opposition, and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 1 of the Notice of Opposition, and therefore denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in paragraph 4 of the Notice of Opposition, and therefore denies the same. However, Applicant asserts that the cited registrations speak for themselves.

5. Aside from the allegation of “long after” any actions of Opposer, which Applicant denies, Applicant admits the allegations made in paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations made in paragraph 6 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

7. Opposer’s Notice of Opposition fails to state grounds on which relief can be granted.

Second Affirmative Defense

8. Opposer is barred from relief by the Doctrine of Acquiescence.

Third Affirmative Defense

9. Opposer is barred from relief by the Doctrine of Laches.

Fourth Affirmative Defense

10. Opposer is barred from relief by the Doctrine of Estoppel.

Fifth Affirmative Defense

11. Opposer has failed to adequately maintain, police or enforce any trademark or proprietary rights it may once have had in its alleged trademarks.

Sixth Affirmative Defense

12. Opposer’s pleaded marks are not inherently distinctive such that purchasers do not associate such marks with Opposer.

Seventh Affirmative Defense

13. Opposer's claims are barred to the extent that Opposer has abandoned any rights it may once have had in its pleaded trademarks.

Eighth Affirmative Defense

14. Opposer's claims are barred because, even if Opposer does have priority of use over its pleaded trademarks, there is no likelihood of confusion between Opposer's marks and Applicant's mark.

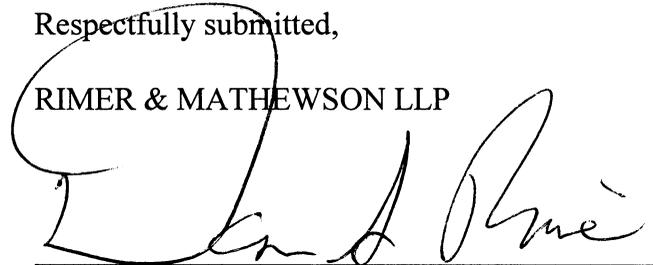
Ninth Affirmative Defense

15. Upon information and belief, there have been no instances of actual consumer confusion between Opposer's marks and the Applicant's mark.

WHEREFORE, Applicant prays that the subject opposition proceeding be dismissed.

Respectfully submitted,

RIMER & MATHEWSON LLP



Dated: 11/27/13

By:

Darren S. Rimer
30021 Tomas, Suite 300
Rancho Santa Margarita, CA 92688
(949) 367-1541
Counsel for Applicant

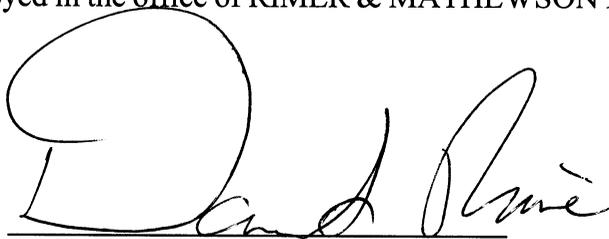
PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 30021 Tomas, Suite 300, Rancho Santa Margarita, California 92688. On November 27, 2013, the attached **ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Antony J. McShane
NEAL GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, IL 60602

Executed on November 27, 2013. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of RIMER & MATHEWSON LLP at whose direction service was made.

A handwritten signature in black ink, appearing to read "Darren S. Rimer", written over a horizontal line.

Darren S. Rimer