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

Proceeding	91217613
Party	Defendant Justus, Nancy
Correspondence Address	Daniel Christopherson Lehrman Beverage Law, PLLC 2911 Hunter Mill Road, Suite 303 Oakton, VA 22124 dan.christopherson@bevlaw.com;rclehrman
Submission	Answer
Filer's Name	Daniel Christopherson
Filer's e-mail	dan.christopherson@bevlaw.com
Signature	/Daniel Christopherson/
Date	09/09/2014
Attachments	Answer.pdf(161735 bytes)

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

THE LEGENDARY HATFIELD &
McCOY FAMILY BRAND, LLC

Opposer,

v.

NANCY JUSTUS,

Applicant

Opposition No.: 91217613
Application Serial No.: 86/135,625

Mark: HATFIELD & MCCOY STILLS

REQUEST FOR ACCEPTANCE OF LATE ANSWER

In response to Opposer's Notice of Opposition, filed on July 29, 2014, Applicant submits the below answer. Due to an oversight by Applicant's attorney, who erroneously believed that the present opposition proceeding had been consolidated along with seven other proceedings into opposition proceeding number 91214683, this answer is now submitted two days after the due date (September 7, 2014) specified in the Trademark Trial and Appeal Board's notice from July 29, 2014. Applicant submits that neither party will be prejudiced by entry of this answer. Accordingly, Applicant respectfully requests that the Board accept this answer as timely so that the matter may be decided on its merits.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Nancy Justus, by way of answer to the opposition of The Legendary Hatfield & McCoy Family Brand, LLC, states:

1. Applicant denies each and every allegation in the Notice of Opposition, except as specifically admitted, qualified, or otherwise answered herein.
2. Applicant admits the allegations set forth in Paragraph 1 of the Notice of Opposition.
3. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 2 of the Notice of Opposition.

4. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 3 of the Notice of Opposition.
5. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 4 of the Notice of Opposition.
6. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 5 of the Notice of Opposition.
7. Applicant admits that Opposer filed on March 6, 2013, at the United States Patent & Trademark Office (“USPTO”) Applications Nos. 85/869,110, 85/869,116, 85/869,122, 85/869,125, 85/869,129, 85/868,792, 85/868,805, 85/869,132, 85/869,137, 85/869,140, 85/868,811, 85/868,818, 85/869,142, 85/869,145, 85/869,148, 85/868,822, 85/868,829, 85/869,151, 85/868,838, 85/868,846, 85/868,876, 85/868,880, 85/868,884, 85/868,889, 85/868,897, 85/868,903, 85/868,908, and 85/868,911. Applicant denies that Opposer filed on March 6, 2013, at the USPTO Applications No. 85/869,155, and 85/869,157. Applicant is without sufficient knowledge or information either to admit or to deny the remaining allegations set forth in Paragraph 6 of the Notice of Opposition and therefore denies the same.
8. Applicant admits that Applicant admits that Opposer filed at the USPTO on March 7, 2013, Application Nos. 85/869,169 and 85/869,186, but denies that such applications were for “beverageware.” Applicant admits that Opposer filed at the USPTO on March 7, 2013, Applications Nos. 86/869,167, 85/869,173, 85/869,177, 85/869/180, 85/869,180, 85/869,181, 85/869,185, 85/869,189, 85/869,192, 85/869,194, and 85/869,197. Applicant is without sufficient knowledge or information either to admit or to deny the remaining allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same.
9. To the extent that Paragraph 8 of the Notice of Opposition merely defines a term, no response is required from Applicant.
10. Applicant admits that Applications Nos. 85/869,116, 85/869,125, 85/869,132, 85/869,137, 85/869,142, 85/869,145, 86/869,151, 85/869,155, 85/869,177, 85/869,116, 85/869,125, 85/869,132, 85/869,137, 85/869,142, and 85/869,145 have received Notices of Allowance. Applicant denies that Application No.

- 85/869,194 has received a Notice of Allowance. Instead, Application No. 85/869,194 is currently pending the decision in a separately filed opposition proceeding. Applicant denies the remaining allegations set forth in Paragraph 9 of the Notice of Opposition.
11. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 10 of the Notice of Opposition.
 12. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 11 of the Notice of Opposition.
 13. Applicant is without sufficient knowledge or information either to admit or deny the allegations set forth in Paragraph 12 of the Notice of Opposition.
 14. Applicant admits the allegations set forth in Paragraph 13 of the Notice of Opposition.
 15. Applicant admits that Applicant filed and is the owner of Trademark Application Serial No. 85/869,214 for HATFIELD AND MCCOY MOONSHINE THE DRINK OF THE DEVIL ANSE HATFIELD, filed March 7, 2013, under Trademark Act § 1(b) based on intent-to-use. Applicant denies the remaining allegations set forth in Paragraph 14 of the Notice of Opposition.
 16. Applicant admits that Applicant has received an advisory notification of a potential refusal of Application Serial No. 85/869,214 based on one or more of Opposer's applications. Applicant denies the remaining allegations set forth in Paragraph 15 of the Notice of Opposition.
 17. It is unclear what Opposer means by "8 months later" in Paragraph 16 of the Notice of Opposition. Applicant admits that it was aware of one or more of Opposer's applications referenced in Paragraphs 6 and 7 of the Notice of Opposition at the time Application Serial No. 85/869,214 was filed. Applicant denies the remaining allegations set forth in Paragraph 16 of the Notice of Opposition.
 18. Applicant admits to filing eight (8) opposition proceedings to oppose the several of Opposer's applications referenced in Paragraph 6 and 7 of the Notice of Opposition. Applicant denies the remaining allegations set forth in Paragraph 17 of the Notice of Opposition.

19. Applicant repeats and reaffirms its Answers set forth in Paragraphs 1 through 18 above in response to the allegations set forth in Paragraph 18 of the Notice of Opposition.
20. Applicant denies the allegations set forth in Paragraph 19 of the Notice of Opposition.
21. Applicant admits that it was aware of one or more of the applications referenced in Paragraphs 6 and 7 of the Notice of Opposition at the time that Application Serial No. 85/869,214 was filed. Applicant denies the remaining allegations set forth in Paragraph 20 of the Notice of Opposition.
22. Applicant denies the allegations set forth in Paragraph 21 of the Notice of Opposition.
23. Applicant denies the allegations set forth in Paragraph 22 of the Notice of Opposition.
24. Applicant denies the allegations set forth in Paragraph 23 of the Notice of Opposition.
25. Applicant denies the allegations set forth in Paragraph 24 of the Notice of Opposition.
26. Applicant denies the allegations set forth in Paragraph 25 of the Notice of Opposition.
27. Applicant denies the allegations set forth in Paragraph 26 of the Notice of Opposition.
28. Applicant denies the allegations set forth in Paragraph 27 of the Notice of Opposition.
29. Applicant denies the allegations set forth in Paragraph 28 of the Notice of Opposition.
30. Applicant denies the allegations set forth in Paragraph 29 of the Notice of Opposition.
31. Applicant denies the allegations set forth in Paragraph 30 of the Notice of Opposition.
32. Applicant admits that if Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of

- Applicant's Opposed Mark. Applicant denies the remaining allegations of Paragraph 31 of the Notice of Opposition.
33. Applicant denies the allegations set forth in Paragraph 32 of the Notice of Opposition.
 34. Applicant denies the allegations set forth in Paragraph 33 of the Notice of Opposition.
 35. Applicant repeats and reaffirms its Answers set forth in Paragraphs 1 through 34 above in response to the allegations set forth in Paragraph 34 of the Notice of Opposition.
 36. Applicant denies the allegations set forth in Paragraph 35 of the Notice of Opposition.
 37. Applicant denies the allegations set forth in Paragraph 36 of the Notice of Opposition.
 38. Applicant denies the allegations set forth in Paragraph 37 of the Notice of Opposition.
 39. Applicant denies the allegations set forth in Paragraph 38 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

40. The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

41. Applicant's HATFIELD & MCCOY STILL'S mark, U.S. Application No. 86/135,625, is distinct from Opposer's marks in appearance, sound, connotation, and commercial impression.

THIRD AFFIRMATIVE DEFENSE

42. Applicant's HATFIELD & MCCOY STILL'S mark, U.S. Application No. 86/135,625, is not likely to cause confusion, mistake, or to deceive with regard to Opposer's marks.

FOURTH AFFIRMATIVE DEFENSE

43. Applicant's goods for which the HATFIELD & MCCOY STILLS mark, U.S. Application No. 86/135,625, is used are substantially and distinctly different from those offered by Opposer under its marks.

FIFTH AFFIRMATIVE DEFENSE

44. Applicant's HATFIELD & MCCOY STILLS mark, U.S. Application No. 86/135,625, used on or in connection with Applicant's goods is not likely to cause confusion, mistake, or to deceive consumers as to the origin, sponsorship, or approval of Applicant's goods by Opposer, or the existence of any affiliation, connection, or association between Applicant and Opposer.

SIXTH AFFIRMATIVE DEFENSE

45. On information and belief, the channels of trade utilized by Applicant for "Distillation apparatus not for scientific purposes; distilling units; stills not for scientific purposes," are very different from the channels of trade used in connection with all of the goods described in Paragraphs 6 and 7 of the Notice of Opposition. Accordingly, there will be no likelihood of confusion between the applied-for mark and Opposer's marks.

SEVENTH AFFIRMATIVE DEFENSE

46. On information and belief, the relevant consumers of Applicant's goods and those of Opposer's goods and services are likely to be sufficiently sophisticated in the marketplace as to avoid any likelihood of confusion.

EIGHTH AFFIRMATIVE DEFENSE

47. On information and belief, Applicant's use of the name HATFIELD & MCCOY is prior to Opposer's actual or constructive dates of first use.

NINTH AFFIRMATIVE DEFENSE

48. On information and belief, one or more of Opposer's marks is invalid as Opposer did not at the time of filing, nor does Opposer presently possess, a bona-fide intent to use the mark(s) in commerce in connection with the goods described therewith.

TENTH AFFIRMATIVE DEFENSE

49. On information and belief, one or more of Opposer's marks is invalid as they are merely geographically misdescriptive.

ELEVENTH AFFIRMATIVE DEFENSE

50. On information and belief, one or more of Opposer's marks is invalid as they create a false presumption of connection with a person.

TWELFTH AFFIRMATIVE DEFENSE

51. On information and belief, one or more of Opposer's marks is invalid because of a likelihood of confusion with registered marks and common law marks.

WHEREFORE, Applicant respectfully requests that Opposition 91217613 be dismissed with prejudice in its entirety.

Dated this 9th day of September, 2014.

Respectfully submitted,
NANCY JUSTUS

By: /Daniel Christopherson/

Attorney for Opposer
Lehrman Beverage Law, PLLC
2911 Hunter Mill Road, Suite 303
Oakton, Virginia 22124

Tel: (202) 449-3739, ext. 708

Fax: (202) 478-5189

Email: dan.christopherson@bevlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by depositing in the U.S. Postal Service, first class postage prepaid, on this 9th day of September, 2014, addressed to the attorney for Applicant as follows:

DON V. KELLY
EVANS & DIXON, LLC
1 METROPOLITAN SQ STE 2500
SAINT LOUIS, MO 63102-2727

/Daniel Christopherson/_____