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

Proceeding	91220327
Party	Defendant Day's Beverages, Inc.
Correspondence Address	ALEX R SLUZAS PAUL AND PAUL Suite 3740 1717 Arch Street PHILADELPHIA, PA 19103 info@paulandpaul.com;asluzas@paulandpau
Submission	Answer
Filer's Name	Alex R Sluzas
Filer's e-mail	info@paulandpaul.com,asluzas@paulandpaul.com
Signature	/Alex R. Sluzas/
Date	02/06/2015
Attachments	Answer.pdf(451433 bytes)

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

In the matter of Serial No.: 86/337,103

Filed: July 15, 2014
For: **CITY CLUB**
Published: December 23, 2014
Applicant: Day's Beverages, Inc.
Atty. Doc. Nos.: 072-14; 3097

3rd Generation Enterprises Co. Corp. :

v. :

Opposition No.: 91220327

Day's Beverages, Inc. :

ANSWER TO NOTICE OF OPPOSITION

Respondent Day's Beverages, Inc., hereinafter "Day's Beverages," by and through its undersigned attorney and pursuant to Rule 12(a) of the Federal Rules of Civil Procedure and Trademark Office Rule 2.106, files its answer to the Notice of Opposition of the Petitioner 3rd Generation Enterprises Co. Corp., hereinafter "3rd Generation," and in support thereof, responds as follows:

1. Day's Beverages is without sufficient information regarding the allegations of Paragraph 1 of the Notice of Opposition, and therefore, denies Paragraph 1.
2. Day's Beverages is without sufficient information regarding the allegations of Paragraph 2 of the Notice of Opposition, and therefore, denies Paragraph 2.

3. Day's Beverages is without sufficient information regarding the allegations of Paragraph 3 of the Notice of Opposition, and therefore, denies Paragraph 3.

4. Day's Beverages is without sufficient information regarding the allegations of Paragraph 4 of the Notice of Opposition, and therefore, denies Paragraph 4.

5. Denied.

6. Day's Beverages is without sufficient information regarding the allegations of Paragraph 6 of the Notice of Opposition, and therefore, denies Paragraph 6.

7. Day's Beverages is without sufficient information regarding the allegations of Paragraph 7 of the Notice of Opposition, and therefore, denies Paragraph 7.

8. Day's Beverages is without sufficient information regarding the allegations of Paragraph 8 of the Notice of Opposition, and therefore, denies Paragraph 8.

9. Day's Beverages is without sufficient information regarding the allegations of Paragraph 9 of the Notice of Opposition, and therefore, denies Paragraph 9.

10. Admitted.

11. Denied.

12. Day's Beverages is without sufficient information regarding the allegations of Paragraph 12 of the Notice of Opposition, and therefore, denies Paragraph 12.

13. Denied.

14. Admitted.

15. Admitted that:

(a) Counsel for 3rd Generation sent a letter dated September 2, 2014, to Day's Beverages and that Day's Beverages responded;

(b) Day's Beverages responded to counsel for 3rd Generation on September 3, 2014;

(c) Counsel for 3rd Generation sent a letter dated October 6, 2014, to counsel for Day's Beverages; and

(d) An Examiner's Amendment was entered U.S. Trademark Application Serial No. 86/337,103 on October 9, 2014;

otherwise denied.

16. Denied.

17. Admitted that U.S. Trademark Application Serial No. 86/337,103 was filed on July 15, 2014.

18. Admitted.

19. Denied.

20. Denied.

21. Day's Beverages is without sufficient information regarding the allegations of Paragraph 21 of the Notice of Opposition, and therefore, denies Paragraph 21.

22. Denied.

23. Denied.

24. Day's Beverages is without sufficient information regarding the allegations of Paragraph 24 of the Notice of Opposition, and therefore, denies Paragraph 24.

25. Day's Beverages is without sufficient information regarding the allegations of Paragraph 25 of the Notice of Opposition, and therefore, denies Paragraph 25.

26. Admitted that Day's Beverages' mark CITY CLUB is the same as that abandoned by 3rd Generation, and otherwise denied.

27. Denied.

28. Denied.

29. Admitted.

30. Denied.

31. Admitted that Day's Beverages has not abandoned U.S. Trademark Application Serial No. 86/337,103, and otherwise denied.

32. Denied.

33. Denied.

34. Denied.

AFFIRMATIVE DEFENSES

Day's Beverages asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

1. As a first and separate defense to Opposer's Notice of Opposition, Day's Beverages alleges that 3rd Generation's Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a second and separate defense to 3rd Generation's Notice of Opposition, Day's Beverages alleges that there is no reasonable dispute that Day's Beverages has not infringed upon any valid rights of 3rd Generation and that, therefore, there is no evidence to support 3rd Generation's claims for relief in this matter.

THIRD AFFIRMATIVE DEFENSE

3. As a third and separate defense to 3rd Generation's Notice of Opposition, Day's Beverages alleges that 3rd Generation's claims are barred by the doctrine of unclean hands and/or fraud on the Trademark Office.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth and separate defense to 3rd Generation's Notice of Opposition, Day's Beverages alleges that 3rd Generation's claims are barred by the doctrines of laches, acquiescence, and estoppel.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth and separate defense to 3rd Generation's Notice of Opposition, Day's Beverages alleges that 3rd Generation lacks standing to file this opposition proceeding.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth and separate defense to 3rd Generation's Notice of Opposition, Day's Beverages alleges 3rd Generation abandoned said previously registered CITY CLUB mark by discontinuing use of said mark in connection with the goods recited therein which tends to impair Day's Beverages' right to use and register its mark.

PRAYER FOR RELIEF,

WHEREFORE, Day's Beverages prays judgment that this Opposition be dismissed with prejudice.

Respectfully submitted,



Alex R. Sluzas, Esq.

February 6, 2015

Paul & Paul
Suite 3740
1717 Arch Street
Philadelphia, PA 19103
(215) 568-4900
Attorneys for Applicant

Order No. 1355

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Notice of Opposition is being served today by first class mail on the attorney of record for Petitioner, Marc P. Misthal, Esq., Gottlieb, Rackman & Reisman, P.C., 270 Madison Ave, New York, NY 10016.

February 6, 2015



Alex R. Sluzas, Esq.

Paul & Paul
Suite 3740
1717 Arch Street
Philadelphia, PA 19103
(215) 568-4900
Attorneys for Applicant