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

Proceeding	91220373
Party	Defendant Embotelladora La Cascada S.A.
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Date	03/06/2015
Attachments	20150306 ANSWER TO OPPOSITION NO. 91220373 APP NOS 85500298 ET AL.pdf(219138 bytes)

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

Carlos Albarracin,)	
)	
Opposer,)	
)	Opposition No. 91220373
v.)	
)	Ser. No. 85500298
Embotelladora La Cascada S.A.,)	Ser. No. 85387354
)	Ser. No. 85387362
Applicant.)	Ser. No. 85387350

ANSWER

Applicant, Embotelladora La Cascada S.A., through its undersigned attorneys, hereby answers the Notice of Opposition filed by Opposer, Carlos Albarracin, filed in connection with the above-captioned opposition proceeding.

With respect to the preamble of the Notice of Opposition, Applicant denies any allegation therein and specifically denies that Opposer is being or will be damaged by the registration of U.S. trademark applications, serial nos. 85500298, 85387354, 85387362 and 85387350.

1. Applicant admits that it has filed applications seeking to register the marks CASCADA, CASCADA RED! & Device, CASCADA ORANGE & Device and CASCADA GRAPE & Device and that its applications currently cover “soft drinks excluding low or no calorie soft drinks” in International Class 32. Applicant further admits that application serial no. 85500298 is based on Section 1(a) of the Trademark Act and that applications, serial nos. 85387354, 85387362 and 85387350 are based on Section 1(b) of the Trademark Act. Applicant denies the remaining allegations of Paragraph 1 of the Notice of Opposition.

2. Applicant admits that application serial no. 85500298 was published for opposition on November 18, 2014, that application serial no. 85387354 was published for

opposition on October 7, 2014, that application serial no. 85387362 was published for opposition on September 30, 2014 and that application serial no. 85387350 was published for opposition on September 30, 2014. Applicant denies the remaining allegations of Paragraph 2 of the Notice of Opposition.

3. Applicant is without sufficient information to admit or deny the allegations of Paragraph 3 of the Notice of Opposition and, therefore, denies them.

4. Applicant is without sufficient information to admit or deny the allegations of Paragraph 4 of the Notice of Opposition and, therefore, denies them. A pending trademark application is not evidence of an applicant's right to use the applied-for mark in commerce in connection with any goods or services.

5. Applicant is without sufficient information to admit or deny the allegations of Paragraph 5 of the Notice of Opposition and, therefore, denies them.

6. Applicant is without sufficient information to admit or deny the allegations of Paragraph 6 of the Notice of Opposition and, therefore, denies them. A cancelled registration does not confer the benefits set forth in Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b).

7. Applicant is without sufficient information to admit or deny the allegations of Paragraph 7 of the Notice of Opposition and, therefore, denies them.

8. Applicant is without sufficient information to admit or deny the allegations of Paragraph 8 of the Notice of Opposition and, therefore, denies them.

9. Applicant is without sufficient information to admit or deny the allegations of Paragraph 9 of the Notice of Opposition and, therefore, denies them.

10. Denied.

11. Applicant is without sufficient information to admit or deny the allegations of Paragraph 11 of the Notice of Opposition and, therefore, denies them.

12. Applicant is without sufficient information to admit or deny the allegations of Paragraph 12 of the Notice of Opposition and, therefore, denies them.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Applicant is without sufficient information to admit or deny the allegations of Paragraph 17 of the Notice of Opposition and, therefore, denies them.

18. Applicant is without sufficient information to admit or deny the allegations of Paragraph 18 of the Notice of Opposition and, therefore, denies them.

19. Applicant admits that its applications were filed without Opposer's consent or permission because no such consent or permission was necessary. Applicant denies the remaining allegations of Paragraph 19 of the Notice of Opposition.

20. Denied.

21. Denied.

22. Applicant is without sufficient information to admit or deny the allegations of Paragraph 22 of the Notice of Opposition and, therefore, denies them.

23. Applicant admits that application was filed based on actual use in commerce pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). Applicant denies the remaining allegations of Paragraph 23 of the Notice of Opposition.

24. Denied.

25. Paragraph 25 of the Notice of Opposition calls for a legal conclusion to which no response is required. To the extent that such a response is required, Applicant denies the allegations.

26. Paragraph 26 of the Notice of Opposition calls for a legal conclusion to which no response is required. To the extent that such a response is required, Applicant denies the allegations.

27. Denied.

28. Applicant admits that registrations issued from its pending trademark applications would be entitled to the benefits of Section 7 of the Trademark Act, 15 U.S.C. § 1057. Applicant denies the remaining allegation of Paragraph 28 of the Notice of Opposition.

29. Applicant admits that registrations issued from its pending trademark applications would be entitled to the benefits of Section 7 of the Trademark Act, 15 U.S.C. § 1057. Applicant denies the remaining allegation of Paragraph 29 of the Notice of Opposition.

30. Denied.

With respect to the unnumbered paragraph following Paragraph 30 of the Notice of Opposition, Applicant denies any allegation therein and respectfully requests that the Notice of Opposition be denied.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses.

First Affirmative Defense

31. Opposer fails to state a claim with respect to 15 U.S.C. § 1125(c) upon which relief may be granted.

Second Affirmative Defense

32. Opposer fails to state a claim with respect to 15 U.S.C. § 1052(a) upon which relief may be granted.

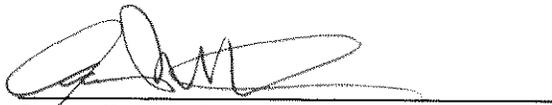
Applicant reserves the right to raise additional defenses as may become known during the discovery and/or testimony periods.

WHEREFORE, Applicant prays that the Notice of Opposition be immediately dismissed with prejudice and that the opposed application be promptly registered.

Respectfully submitted,

EMBOTELLADORA LA CASCADA S.A.

By:


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "ANSWER" was served on Opposer's attorney, HAROLD G FURLOW with an address at 260 West Main Street, Suite 10, Bay Shore, NY 11706, via first class mail, postage prepaid, today March 6, 2015.

By: 

Laura K. Greer