

ESTTA Tracking number: **ESTTA683863**

Filing date: **07/15/2015**

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

Proceeding	91221839
Party	Defendant Kindhub, LLC
Correspondence Address	JOEL D. LEVITON STINSON LEONARD STREET LLP 150 S 5TH ST STE 2300 MINNEAPOLIS, MN 55402 trademark.mpl@stinsonleonard.com, joel.leviton@stinsonleonard.com
Submission	Answer
Filer's Name	Laila S. Wolfgram
Filer's e-mail	laila.wolfgram@stinsonleonard.com
Signature	/laila s. wolfgram/
Date	07/15/2015
Attachments	KINDHUB Opposition - Applicant_s Answer PDF.PDF(194054 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

KIND Management Inc.,

Opposition No.: 91221839

Opposer,

v.

Kindhub, LLC,

Applicant.

ANSWER TO OPPOSER'S NOTICE OF OPPOSITION

Through the undersigned counsel, Applicant, Kindhub, LLC ("Kindhub"), answers the Notice of Opposition filed against Application Serial No. 86/300,597 by purported Opposer KIND Management Inc. ("Opposer"), as set forth below. The Answer paragraphs are numbered to correspond to the numbered paragraphs of the Notice of Opposition.

The first paragraph of the Notice of Opposition is an introductory paragraph to which no responsive pleading is required. Kindhub reserves all rights to challenge KIND Management Inc.'s basis to oppose Application Serial 86/300,597, as KIND Management Inc. did not obtain an extension of time to oppose the application. KIND Management Inc. should be required to demonstrate privity with Kind LLC, the party that obtained the extension of time to oppose Application Serial No. 86/300,597. To the extent a response is deemed necessary, Kindhub denies that Opposer will be damaged by registration of the mark that is the subject of Application Serial No. 86/300,597 and denies the Opposer is entitled to any relief.

1. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Notice of Opposition and, therefore, denies the same.

3. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in in Paragraph 3 of the Notice of Opposition and, therefore, denies the same.

4. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Notice of Opposition and, therefore, denies the same.

5. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Notice of Opposition and, therefore, denies the same.

6. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Notice of Opposition and, therefore, denies the same.

8. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Notice of Opposition and, therefore, denies the same. Kindhub further denies that Opposer has the exclusive right to use trademarks with the term “KIND,” including in connection with food and beverage products, as

demonstrated by the numerous registered and unregistered marks that comprise or contain the word “KIND,” including the following (among others):

- KINDER for “chocolate candy bars” registered in 1968 under Registration No. 848,294;
- KIND EARTH ORGANICS for “fresh vegetables” registered in 1997 under Registration No. 2,114,814;
- MY KIND OF MEAL for “prepackaged meals consisting of primarily of one or more of meat, cheese, and vegetables” registered in 2000 under Registration No. 2,321,074;
- THE KIND for “toasted submarine sandwich” registered in 2002 under Registration No. 2,651,400;
- KINDAI for “fresh, chilled or frozen edible aquatic animals, not live” registered in 2009 under Registration No. 3,623,579;
- KINDIN for “rice” registered in 2010 under Registration No. 3,887,640;
- GOODKIND for “dairy based creamer and non-dairy creamer” registered in 2011 under Registration No. 3962880;
- KIND COFFEE for “organic coffee” registered in 2005 under Registration No. 3,015,282;
- BEEKIND for “honey” registered in 2005 under Registration No. 3,023,259;
- MAN KIND TEA for “tea” registered in 2006 under Registration No. 3,164,027;
- KIND SUDS! for “beer” registered in 2007 under Registration No. 3,335,247;
- WUNDERKIND for “processed olives and olive oils, edible oils” registered in 2011 under Registration No. 3,906,999;
- ALL KINDS OF GOOD for “fruit juices; Fruit nectars; Non-alcoholic fruit juice beverages” registered in 2011 under Registration No. 3,967,805;
- HUMANKIND for, among other things, “bottled drinking water” registered in 2012 under Registration No. 4,165,422;
- TEA OF A KIND for, among other things, “beverages made of tea” registered in 2012 under Registration No. 4,251,437;
- FINEST KIND for “mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages” registered in 2014 under Registration No. 4,519,539;

- A KINDER KIND OF EGG for “eggs” registered in 2015 under Registration No. 4,680,947;
- KIND RYED for “ale; beer” registered in 2015 under Registration No. 4,689,409; and
- Common law uses of marks with “KIND” including, without limitation, the following:



9. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of the Notice of Opposition and, therefore, denies the same.

10. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Notice of Opposition and, therefore, denies the same.

11. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Notice of Opposition and, therefore, denies the same.

12. Kindhub admits the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Kindhub admits the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Kindhub admits the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Kindhub denies the allegations contained in Paragraph 15.

16. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16 of the Notice of Opposition and, therefore, denies the same.

17. Kindhub denies the allegations contained in Paragraph 17.

18. Kindhub repeats its answer to every allegation set forth in paragraphs 1 through 17.

19. Kindhub denies the allegations contained in Paragraph 19.

20. Kindhub denies the allegations contained in Paragraph 20.

21. Kindhub denies the allegations contained in Paragraph 21.

22. Kindhub denies the allegations contained in Paragraph 22.

23. Kindhub denies the allegations contained in Paragraph 23.

24. Kindhub repeats its answer to every allegation set forth in paragraphs 1 through 23.

25. Kindhub denies the allegations contained in Paragraph 25.

26. Kindhub repeats its answer to every allegation set forth in paragraphs 1 through 25.

27. Kindhub is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 27 of the Notice of Opposition and, therefore, denies the same.

28. Kindhub denies the allegations contained in Paragraph 28.

29. Kindhub denies the allegations contained in Paragraph 29.

WHEREFORE, Applicant, Kindhub, respectfully requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition with prejudice.

STINSON LEONARD STREET LLP

Dated: July 15, 2015

By: 

Joel D. Leviton
Laila S. Wolfgram
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Telephone: 612.335.1500
joel.leviton@stinsonleonard.com
Trademark.MPL@stinsonleonard.com

**ATTORNEYS FOR
KINDHUB LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER TO OPPOSER'S NOTICE OF OPPOSITION was served on July 15, 2015, upon the following attorney for KIND Management Inc. by First Class Mail:

Margarita Wallach
McCarter & English, LLP
245 Park Avenue, 27th Floor
New York, NY 10167
UNITED STATES

Dated: July 15, 2015

s/Laila S. Wolfgram/
Laila S. Wolfgram