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

Proceeding	91223763
Party	Defendant Baked Ziti LLC
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Attachments	answer 91223763.pdf(168027 bytes)

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

THIRD ESTATE LLC :
Opposer :
v. : Opposition No. 91223763
BAKED ZITI LLC :
Applicant :

ANSWER

Applicant Baked Ziti LLC ("Applicant") hereby answers the allegations contained in the numbered paragraphs of the notice of opposition filed herein as follows.

BACKGROUND

1. Applicant denies the allegations contained in Paragraph No. 1.
2. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 2 and, therefore, denies the same.
3. Applicant admits that Opposer attached the registrations identified in Paragraph Nos. 3(a) to 3(m) to the notice of opposition. Applicant is without sufficient knowledge to form a belief as to the remaining allegations contained in Paragraph No. 3 and, therefore, denies the same.
4. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 4 and, therefore, denies the same.
5. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 5 and, therefore, denies the same.

6. Applicant admits that Opposer attached an Exhibit N to the notice of opposition. Applicant is without sufficient knowledge to form a belief as to the remaining allegations contained in Paragraph No. 6 and, therefore, denies the same.

7. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 7 and, therefore, denies the same.

8. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 8 and, therefore, denies the same.

9. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 9 and, therefore, denies the same.

10. Applicant denies that wearing apparel in public performances and appearances connects an artist's fan base with Opposer. Applicant is without sufficient knowledge to form a belief as to the remaining allegations contained in Paragraph No. 10 and, therefore, denies the same.

11. Applicant denies the allegations contained in Paragraph No. 11.

12. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 12 including subparagraphs (a) through (e) and, therefore, denies the same.

13. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 13 including subparagraphs (a) through (f) and, therefore, denies the same.

14. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 14 including subparagraphs (a) through (d) and, therefore, denies the same.

15. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 15 and, therefore, denies the same.

16. Applicant admits that it received a letter from Opposer's counsel on or about February 24, 2015, demanding that it cease use of DOPE in connection with the promotion and presenting of live musical performances. Applicant denies the remaining allegations contained in Paragraph No. 16.

17. Applicant admits that its counsel responded to Opposer's correspondence.

18. Applicant admits that it filed Application No. 86569993 on March 19, 2015.

COUNT I: LIKELIHOOD OF CONFUSION

19. No answer is required to this paragraph. To the extent an answer is required, Applicant repeats and realleges its answers in Paragraph 1 through 18.

20. Applicant denies the allegations contained in Paragraph No. 20.

21. Applicant denies the allegations contained in Paragraph No. 21.

22. Applicant denies the allegations contained in Paragraph No. 22.

23. Applicant denies the allegations contained in Paragraph No. 23.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses based upon information presently available and they reserve the right to assert additional affirmative defenses or withdraw any of these affirmative defenses as further information becomes available.

FIRST AFFIRMATIVE DEFENSE

Opposer's claims should be dismissed because Opposer has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by the fact that Opposer lacks standing in that Opposer has never provided entertainment services and Applicant is not seeking to register its mark for any clothing products. As a result, Opposer cannot be damaged by registration of Applicant's mark.

WHEREFORE, Applicant prays that the notice of opposition be dismissed.

BAKED ZITI LLC

By 

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing (re Opp. No. 91223763) is being served upon Opposer's counsel Wesley W. Lew of Robins Kaplan LLP at 2049 Century Park East, Suite 3400, Los Angeles, California 90067 by first class mail, postage prepaid, on December 21, 2015.

