

ESTTA Tracking number: **ESTTA762871**

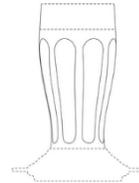
Filing date: **08/05/2016**

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

Proceeding	91227568
Party	Defendant Classic Brands, LLC
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Signature	/Margaret M. Arcaro/
Date	08/05/2016
Attachments	Answer - Big Gulp Design.pdf(27595 bytes )

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

AKERUE INDUSTRIES LLC d/b/a	)	Opposition No. 91227568
KAY HOME PRODUCTS	)	
	)	Application Serial No. 86/514,644
Opposer,	)	
	)	Mark: Design depicted below
v.	)	
	)	
CLASSIC BRANDS, LLC	)	
	)	
Applicant.	)	



**ANSWER TO NOTICE OF OPPOSITION**

Applicant Classic Brands, LLC (“Applicant”) answers the Notice of Opposition filed by Opposer Akerue Industries LLC d/b/a Kay Home Products (“Opposer”) as follows. To the extent not explicitly admitted, all allegations in the Notice of Opposition are denied.

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations of Paragraph 2 of the Notice of Opposition.
3. Applicant admits that the Application as originally filed identified the goods as “Bird feeders; plastic storage containers for storing and dispensing bird seed,” but Applicant denies that the Application as published contains that identification of goods. Applicant denies any remaining allegations of Paragraph 3 of the Notice of Opposition.
4. Applicant admits the allegations of Paragraph 4 of the Notice of Opposition.
5. Applicant admits that it seeks registration on the Principal Register under 15 U.S.C. § 1052(f) because the Mark has acquired distinctiveness and is entitled to registration. Applicant denies any remaining allegations of Paragraph 5 of the Notice of Opposition.
6. Applicant admits the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 11 of the Notice of Opposition and therefore denies the same.

12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

13. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 13 of the Notice of Opposition and therefore denies the same.

14. Applicant denies the allegations of Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations of Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations of Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations of Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations of Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations of Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations of Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations of Paragraph 21, which is mis-numbered as a second Paragraph 17, of the Notice of Opposition.

22. Applicant denies the allegations of Paragraph 22, which is mis-numbered as a second Paragraph 18, of the Notice of Opposition.

23. Applicant denies the allegations of Paragraph 23, which is mis-numbered as a second Paragraph 19, of the Notice of Opposition.

24. Applicant denies the allegations of Paragraph 24 of the Notice of Opposition.

25. Applicant admits that it did not submit sworn declarations from customers as evidence of acquired distinctiveness as part of its Application Serial No. 86/514,644. Applicant denies any remaining allegations of Paragraph 25, which is mis-numbered as a second Paragraph 20, of the Notice of Opposition

26. Applicant denies the allegations of Paragraph 26, which is mis-numbered as Paragraph 21, of the Notice of Opposition.

27. Applicant admits the allegations of Paragraph 27, which is mis-numbered as Paragraph 22, of the Notice of Opposition.

28. Applicant admits the allegations of Paragraph 28, which is mis-numbered as Paragraph 23, of the Notice of Opposition.

29. Applicant denies the allegations of Paragraph 29, which is mis-numbered as Paragraph 30, of the Notice of Opposition.

30. Applicant denies the allegations of Paragraph 30, which is mis-numbered as Paragraph 31, of the Notice of Opposition.

#### **APPLICANT'S AFFIRMATIVE DEFENSES**

1. Opposer has failed to state a claim upon which relief may be granted.
2. Opposer's claims are barred by the doctrines of laches, waiver, estoppel and unclean hands. Opposer has long been aware of Applicant's use of the design depicted in

Application Serial No. 86/514,644. During Opposer's unreasonable delay, the design depicted in Application Serial No. 86/514,644 has acquired distinctiveness and has generated substantial goodwill for Applicant. Applicant has relied to its detriment on Opposer's failure to object. Opposer's conduct bars Opposer from obtaining relief by its Notice.

3. Applicant reserves the right to rely on all affirmative defenses that become available or appear through discovery in these proceedings, and Applicant reserves the right to amend its Answer and Affirmative Defenses for the purposes of asserting any such affirmative defenses.

WHEREFORE, Applicant respectfully requests:

1. that the Opposition be dismissed in its entirety;
2. that Applicant be awarded its costs and attorneys' fees; and
3. that Applicant's Application Serial No. 86/514,644 be permitted to proceed to registration.

Respectfully submitted,

Date: August 5, 2016



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**CERTIFICATE OF ESTTA FILING**

I hereby certify that a copy of the foregoing paper was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 5<sup>th</sup> day of August, 2016.



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Margaret M. Arcaro

**CERTIFICATE OF MAIL SERVICE**

I hereby certify that a copy of the foregoing paper is being deposited with the U.S. Postal Service by First Class Mail on August 5, 2016 in an envelope addressed to:

Douglas W. Rose  
Lora L. LoCoco  
Rose & deJONG, S.C.  
161 South First Street  
Suite 400  
Milwaukee, WI 53204



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Margaret M. Arcaro