

ESTTA Tracking number: **ESTTA758897**

Filing date: **07/18/2016**

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

| | |
|---------------------------|---|
| Proceeding | 91227761 |
| Party | Defendant BirdShack, LLC |
| Correspondence Address | NATHAN W. JOHNSON Bradley Arant Boult Cummings Llp 1819 5th Ave N Birmingham, AL 35203-2120 mmarron@bradley.com, njohnson@bradley.com, devans@bradley.com |
| Submission | Answer |
| Filer's Name | Michael S. Denniston |
| Filer's e-mail | mdenniston@bradley.com |
| Signature | /michael s. denniston/ |
| Date | 07/18/2016 |
| Attachments | BHM-4042868-v1-Giles-Birdshack-Caseys-No_91227761-Answer.pdf(26340 bytes) |

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

| | | |
|--------------------------------|---|------------------------|
| CASEY’S RETAIL COMPANY, |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | OPPOSITION NO.: |
| |) | 91227761 |
| BIRDSHACK, LLC, |) | |
| |) | |
| Applicant/Respondent. |) | |
| |) | |

ANSWER TO NOTICE OF OPPOSITION

Applicant and Respondent Birdshack, LLC (“Birdshack”) responds to the Notice of Opposition (the “Opposition”) filed by Opposer Casey’s Retail Company (“Casey’s”) concerning Application No. 86/637,343 as follows:

In response to the numbered paragraphs of the Opposition, Birdshack responds as follows;

1. At this time, Birdshack lacks sufficient information to enable it to admit or deny the allegations set forth in Paragraph 1 of the Opposition and, therefore, demands strict proof of those allegations.

2. Admitted.

3. Birdshack admits that the USPTO issued Registration No. 4,775,857 and avers that the fact of the registration speaks for itself. Birdshack denies all remaining allegations of Paragraph 3 of the Opposition and demands strict proof of those allegations.

4. At this time, Birdshack lacks sufficient information to enable it to admit or deny the allegations set forth in the first sentence of Paragraph 4 of the Opposition and, therefore,

demands strict proof of those allegations. Birdshack denies all remaining allegations of Paragraph 4 of the Opposition and demands strict proof of those allegations.

5. At this time, Birdshack lacks sufficient information to enable it to admit or deny the allegations set forth in Paragraph 5 of the Opposition and, therefore, demands strict proof of those allegations.

6. Admitted.

7. At this time, Birdshack lacks sufficient information to enable it to admit or deny the allegations set forth in Paragraph 7 of the Opposition and, therefore, demands strict proof of those allegations.

8. Birdshack denies the allegations of Paragraph 8 of the Opposition and demands strict proof of those allegations.

9. Birdshack denies the allegations of Paragraph 8 of the Opposition and demands strict proof of those allegations.

10. At this time, Birdshack lacks sufficient information to enable it to admit or deny the allegations set forth in Paragraph 10 of the Opposition and, therefore, demands strict proof of those allegations.

11. Birdshack denies the allegations of Paragraph 11 of the Opposition and demands strict proof of those allegations.

12. Admitted, but Birdshack avers that its use and application for registration for the Chicken on a Weathervane design did not require Opposer's consent.

13. Birdshack admits that registration of the mark Chicken on a Weathervane design will provide Birdshack with the prima facie exclusive rights associated with a registration.

Birdshack denies the remaining allegations of Paragraph 13 of the Opposition and demands strict proof of those allegations.

14. Birdshack denies the allegations of Paragraph 14 of the Opposition and demands strict proof of those allegations.

15. Paragraph 15 merely states that Opposer has appointed an attorney to act on its behalf and for other purposes. As this paragraph does not state allegations material to this dispute, it does not require a response from Birdshack.

AFFIRMATIVE DEFENSES

1. Opposer's Opposition fails to state a claim upon which relief can be granted.
2. Birdshack denies all material allegations of the Opposition that are not expressly admitted.
3. Birdshack reserves the right to add additional affirmative defenses as discovery proceeds in this proceeding.

WHEREFORE, Applicant/Respondent Birdshack requests that the Notice of Opposition be dismissed, with prejudice.

/s/Michael S. Denniston
Michael S. Denniston
One of the Attorneys for
Applicant/Respondent Birdshack, LLC

OF COUNSEL:
Nathan W. Johnson
Michele P. Marron
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
Telephone: (205) 521-8000
Facsimile: (205) 521-8800
Email: mdenniston@bradley.com
Email: njohnson@bradley.com
Email: mmarron@bradley.com

CERTIFICATE OF FILING

I hereby declare that the foregoing document has been filed via the Electronic System for Trademark Trial and Appeals (ESTTA”) this 18th day of July, 2016.

/s/ Michael S. Denniston

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing on:

Christine Lebron-Dykeman
Brandon Clark
McKee, Voorhees & Sease, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, IA 50209-2721
Laura C. Miller

by placing a copy of same in the United States Mail, first-class postage prepaid, on this 18st day of July, 2016

s/Michael S. Denniston
OF COUNSEL