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

Proceeding	91228831
Party	Defendant OETTINGER DAVIDOFF AG
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Date	10/14/2016
Attachments	Aurora Barrel Aged - Answer to Notice of Opposition.pdf(15478 bytes)

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

Opposition No.: 91228831

LA AURORA, S.A.)
)
Opposer,)
v.)
)
OETTINGER DAVIDOFF, A.G.)
)
Applicant.)
_____	/

ANSWER TO NOTICE OF OPPOSITION

Oettinger Davidoff, A.G. (“Applicant”) answers La Aurora, S.A.’s (“Opposer”) Notice of Opposition as follows:

1. Admitted.
2. Admitted to the extent that the application speaks for itself, otherwise denied.
3. Without knowledge, therefore denied.
4. Admitted.
5. Admitted as to Applicant, otherwise denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Opposer cites to records of the United States Patent and Trademark Office which are the best evidence of their content; therefore, reference is hereby made to the same. Except as admitted, denied.

12. Admitted that Applicant recently obtained Registration No. 4,915,819 for “AMERICAN BARREL AGED;” otherwise, denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

COUNT I – LIKELIHOOD OF CONFUSION

18. Applicant alleged and incorporates the foregoing paragraphs as if fully stated herein.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

1. As a first and separate affirmative defense, Applicant alleges that Opposer’s claims in its Notice are barred, in whole or in part, by the doctrine of unclean hands of Opposer.

SECOND AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning)

2. As a second and separate affirmative defense, Applicant alleges that Opposer's alleged mark containing the term "Barrel Aged" lacks secondary meaning and is not a protectable trademark because Opposer cannot show that the primary significance of the term "Barrel Aged" in the minds of the consuming public is not barrel aged products, but rather the source itself; therefore, Applicant is free to use the alleged trademark in commerce.

THIRD AFFIRMATIVE DEFENSE

(Descriptiveness)

3. As a third and separate affirmative defense, Applicant alleges that Opposer's use of the term "Barrel Aged" is merely descriptive, and is used by numerous third party private and retail entities throughout the United States to describe the method of aging cigars in barrels.

FOURTH AFFIRMATIVE DEFENSE

(Generic Trademark)

4. As a fourth and separate affirmative defense, Applicant alleges that Opposer's alleged mark is generic for use with tobacco products and Applicant's use of the term "Barrel Aged" in commerce is permissible.

FIFTH AFFIRMATIVE DEFENSE

(No Inherent Distinctiveness)

5. As a fifth and separate affirmative defense, Applicant alleges that Opposer's alleged mark is weak, generic, and has not obtained the level of distinctiveness sufficient to obtain relief under the Lanham Act or other applicable state and federal laws, and Applicant is free to use its mark in commerce.

SIXTH AFFIRMATIVE DEFENSE

(Other Defenses)

6. Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

CONCLUSION AND PRAYER

WHEREFORE, Applicant Oettinger Davidoff, A.G. prays that the Notice of Opposition be dismissed, that Applicant be awarded its attorneys' fees and expenses incurred in defending this Opposition, that all costs of this action be taxed against Opposer, and that Court award any other and further relief as it may deem just and proper.

Dated: October 14, 2016

/s/Debra Faulk
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Notice of Opposition was served on: Frank Herrera, Esquire, H New Media Law, 480 Hibiscus Street, Suite 103, West Palm Beach, FL 33401, fherrera@hnewmedia.com by filing the foregoing using the ESTTA system, which will send a notice of electronic filing to all counsel of record in this action.

/s/ Debra Faulk
Debra Faulk