

ESTTA Tracking number: **ESTTA251961**

Filing date: **12/01/2008**

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

Proceeding	92050094
Party	Defendant Agroamerica Corporation
Correspondence Address	Agroamerica Corporation Avenida Las Americas 22-83 Zona 14 Ciudad, GUATEMALA
Submission	Answer
Filer's Name	Albert Bordas, Esq.
Filer's e-mail	tm@bordasiplaw.com
Signature	/ab/
Date	12/01/2008
Attachments	081201.registrant's.agroamerica.answer.pdf ( 4 pages )(87211 bytes )

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

In the Matter of Trademark Registration No.: 3389431  
For the Mark: "WATTA"  
Registered on: February 26, 2008

Whataburger Partnership L.P.	)	
A Texas Corporation	)	
Petitioner.	)	
	)	
	)	Cancellation No. 92050094
vs.	)	
	)	
Agroamerica Corporation	)	
A British Virgin Island Corporation	)	
Registrant.	)	
_____	)	

**REGISTRANT, AGROAMERICA CORPORATION'S ANSWER**

Registrant, AGROAMERICA CORPORATION ("Registrant"), by and through its undersigned counsel, hereby files its Answer to Petitioner's, WHATABURGUER PARTNERSHIP L.P., Cancellation and states the following:

**(Any allegation of Petitioner's Complaint not specifically admitted herein is hereby denied).**

1. Defendant is without knowledge of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 7h, 7i, 7j, 7k, 7l, 7m, 7n, 7o, 7p, 7q, 7r, 7s, 8, 9 and 10 of Petitioner's complaint; thus, strict proof thereof is demanded.
2. Paragraph 11 is hereby Admitted as pled.
3. Paragraph 12 is hereby Denied in part as pled. Second sentence is admitted as pled.
4. Paragraphs 13, 14, 15, and 16 are hereby Denied as pled.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

5. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTA that has been used or will be used in interstate commerce for fresh fruits and vegetables.

### **SECOND AFFIRMATIVE DEFENSE**

6. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTA FRUIT! and Design that has been used in interstate commerce for fresh fruits and vegetables.

### **THIRD AFFIRMATIVE DEFENSE**

7. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTABANANA that has been used or will be used in interstate commerce for fresh fruits and vegetables.

### **FOURTH AFFIRMATIVE DEFENSE**

8. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTAPINEAPPLE that has been used or will be used in interstate commerce for fresh fruits and vegetables.

### **FIFTH AFFIRMATIVE DEFENSE**

9. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTAPLANTAIN that has been used or will be used in interstate commerce for fresh fruits and vegetables.

### **SIXTH AFFIRMATIVE DEFENSE**

10. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTARAMBUTAN that has been used or will be used in interstate commerce for fresh fruits and vegetables.

**SEVENTH AFFIRMATIVE DEFENSE**

11. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTALYCHI that has been used or will be used in interstate commerce for fresh fruits and vegetables.

**EIGHTH AFFIRMATIVE DEFENSE**

12. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTAMANGOSTIN that has been used or will be used in interstate commerce for fresh fruits and vegetables.

**NINTH AFFIRMATIVE DEFENSE**

13. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTALITTLEBANANA that has been used or will be used in interstate commerce for fresh fruits and vegetables.

**TENTH AFFIRMATIVE DEFENSE**

14. The Petitioner is not entitled to the relief requested in its Complaint because Registrant owns a family of marks comprising: WATTAMELON that has been used or will be used in interstate commerce for fresh fruits and vegetables.

**ELEVENTH AFFIRMATIVE DEFENSE**

15. The Petitioner is not entitled to the relief requested in its Complaint because the Petitioner did not Oppose Registrant's mark: WATTA, for fresh fruits and vegetables when it published on May 15, 2007 in the USPTO's Official Gazette.

**TWELTH AFFIRMATIVE DEFENSE**

16. The Petitioner's Complaint is barred by laches because the Petitioner did not Oppose Registrant's mark: WATTA, for fresh fruits and vegetables when it published on May 15, 2007 in the USPTO's Official Gazette.

WHEREFORE, Registrant, AGROAMERICA CORPORATION, respectfully requests that this Notice of Cancellation be dismissed, with judgment entered in its favor and against Opposer Whataburger Partnership, and that this Honorable Court award all other relief to Registrant which it deems fair and reasonable under the circumstances of this case.

Respectfully submitted,  
Albert Bordas, P.A.  
Counsel for Registrant  
5975 Sunset Drive  
Suite 607  
Miami, FL 33143

e-mail: [albert@bordasiplaw.com](mailto:albert@bordasiplaw.com)  
Tel: 305-669-9848  
Fax: 305-669-9851

By: /Albert Bordas/  
Albert Bordas, Esq.  
FL Bar No: 330220

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Registrant's Answer was served via Facsimile and U.S. Mail this 1st day of December 2008 to Mr. Christopher Kelly at Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006. Fax: 202.719.7049

By: /Albert Bordas/  
Albert Bordas, Esq.

#### **CERTIFICATE OF ONLINE SUBMISSION**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed online with the Trademark Trial and Appeal Board using ESTTA, this 1st day of December 2008.

By: /Albert Bordas/  
Albert Bordas, Esq.