

ESTTA Tracking number: **ESTTA359987**

Filing date: **07/26/2010**

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

Proceeding	92052344
Party	Defendant Arabica Funding, Inc.
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Submission	Answer
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Date	07/26/2010
Attachments	CARIBREW CLUB Amended Answer.pdf (6 pages)(179616 bytes)

3. Registrant lacks information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Amended Petition to Cancel and therefore denies them.

4. Registrant lacks information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 4 of the Amended Petition to Cancel and therefore denies them. The remaining statements are legal conclusions to which no response is required.

5. Registrant does not understand the meaning or significance of Petitioners' allegations that "[t]he mark **Caribrew** has been and is sold to the world's largest retailers," "was sold to Wal-Mart and other entities," and "is currently being sold into Wal-Mart, Fred Meyer (Kroger) and other entities." If Petitioners have *sold the **Caribrew** mark*, then they have no standing in this action. Assuming, however, that Petitioners are attempting to allege the sale of something other than the mark itself, Registrant lacks information sufficient to form a belief as to the truth of such allegations and therefore denies them.

6. Registrant lacks information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 6 of the Amended Petition to Cancel and therefore denies them.

7. Registrant admits that there is a likelihood of confusion between Registrant's trademark **CARIBREW CLUB** (Reg. No. 3,454,826) and the trademark **CARIBREW** that Petitioners have applied to register for a variety of coffee-related products (Ser. No. 77/879,326); however, Registrant asserts that the confusion is caused by Petitioners' application to register the **CARIBREW** mark, rather than the existence of Registrant's **CARIBREW CLUB** registration, which has priority. Registrant lacks information sufficient to form a belief as to the truth of the remaining factual allegations contained in paragraph 7 of the Amended Petition to Cancel and

therefore denies them. The remaining statements are legal conclusions to which no response is required.

8. Registrant admits that there is a likelihood of confusion between Registrant's trademark **CARIBREW CLUB** (Reg. No. 3,454,826) and the trademark **CARIBREW** that Petitioners have applied to register for a variety of coffee-related products (Ser. No. 77/879,326); however, Registrant asserts that the confusion is caused by Petitioners' application to register the **CARIBREW** mark, rather than the existence of Registrant's **CARIBREW CLUB** registration, which has priority. Registrant lacks information sufficient to form a belief as to the truth of the remaining factual allegations contained in paragraph 8 of the Amended Petition to Cancel and therefore denies them. The remaining statements are legal conclusions to which no response is required.

9. To the extent there are any factual allegations contained in paragraph 9 of the Amended Petition to Cancel, Registrant denies them. The remaining statements are legal conclusions to which no response is required.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to the Amended Petition to Cancel, Registrant alleges as follows:

1. Petitioners' claims are barred by the doctrines of laches because Petitioners had actual or constructive knowledge of Registrant's **CARIBREW CLUB** mark on or before September 25, 2007, and took no action until April 20, 2010. On information and belief, Petitioners had no excuse for this delay. Registrant was prejudiced by that delay, at least because Registrant has invested in and promoted its **CARIBREW CLUB** mark during the unexcused delay.

2. Petitioners do not have prior exclusive rights in the **CARIBREW** mark. On information and belief, no rights have ever have been established through use of the mark, because it has never actually been used as a trademark, and/or any such rights that may ever have been established did or do not exist during any relevant time period because the mark has not been continuously used in commerce, by Petitioners or any of its licensees, as a trademark for any good related to the services covered by Registrant's **CARIBREW CLUB** registration.

3. Registrant's prior registrations of marks essentially the same as **CARIBREW CLUB** for essentially the same goods and services mean that Registrant's **CARIBREW CLUB** registration can cause no additional injury to Petitioners such that cancellation is improper. These prior registrations include at least U.S. Registration Nos. 3,533,290 and 2,609,319, of **CARIBOU** and **CARIBOU COFFEE**, respectively, for coffee and other related products; and U.S. Registration Nos. 2,703,741 and 1,839,091 of the **CARIBOU COFFEE** mark for retail and restaurant services featuring coffee.

4. Registrant's prior registrations, whose registration dates pre-date Petitioners' claimed first use dates, of marks that create the same commercial impression as Registrant's **CARIBREW CLUB** mark for substantially similar goods, mean Petitioners' claim of priority is false. These prior registrations include at least those listed in Affirmative Defense No. 3.

Registrant reserves the right to amend its Answer to add additional or other defenses that cannot now be articulated due to Petitioners' failure to particularize its claims and/or the need for further discovery regarding Petitioners' claims.

WHEREFORE, Registrant prays for judgment dismissing the Amended Petition to Cancel with prejudice.

DORSEY & WHITNEY LLP

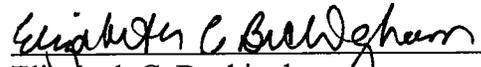
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served via electronic mail to Petitioners Roger W. Zak And Rhonda I. Zak, The Unlimited/Alaska Hats & Apparel, 13428 E. Verda Drive, PO Box 4102, Palmer, Alaska, 99645-4102, at lureofak@mtaonline.com, this 26th day of July, 2010.


Elizabeth C. Buckingham

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