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

Proceeding	92053518
Party	Defendant Atlantic Bottling, LLC
Correspondence Address	BRIAN M GAYNOR LAW OFFICES OF EZRA SUTTON PA PLZ 9 900 US HWY 9 WOODBIDGE, NJ 07095 UNITED STATES bgaynor@ezrasutton.com
Submission	Answer
Filer's Name	Brian M. Gaynor
Filer's e-mail	bgaynor@ezrasutton.com
Signature	/brian gaynor/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baron Nahmias Inc.,

Petitioner,

v.

Atlantic Bottling, LLC,

Registrant.

Cancellation No.: 92053518

Reg. No.: 3291386, 3234012

Marks: MAHIA LE FIG, MAHIA

ANSWER AND AFFIRMATIVE DEFENSES TO PETITION FOR CANCELLATION

Registrant, Atlantic Bottling, LLC, through its attorneys, Ezra Sutton & Associates, PA, responds to the Petition for Cancellation as follows:

1. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 1 of the Petition for Cancellation, and leaves Petitioner to its proofs.

2. Paragraph 2 is admitted as to Registrant's corporate name; Registrant's address is 23 Cindy Lane, Ocean, New Jersey 07712.

3. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 3 of the Petition for Cancellation, and leaves Petitioner to its proofs.

4. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 4 of the Petition for Cancellation, and leaves Petitioner to its proofs.

5. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 5 of the Petition for Cancellation, and leaves Petitioner to its proofs.

6. Registrant admits that its mark contain the term “MAHIA.” Registrant denies the remaining allegations of Paragraph 6 of the Petition for Cancellation.

7. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 7 of the Petition for Cancellation, and leaves Petitioner to its proofs.

8. Registrant denies that Petitioner will be damaged by Reg. Nos. 3291386 and 3234012.

9. Paragraph 9 does not state any allegations to which any response is required.

10. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 10 of the Petition for Cancellation, and leaves Petitioner to its proofs.

11. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 11 of the Petition for Cancellation, and leaves Petitioner to its proofs.

12. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 12 of the Petition for Cancellation, and leaves Petitioner to its proofs.

13. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 13 of the Petition for Cancellation, and leaves Petitioner to its proofs.

14. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 14 of the Petition for Cancellation, and leaves Petitioner to its proofs.

15. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 15 of the Petition for Cancellation, and leaves Petitioner to its proofs.

16. Paragraph 16 is admitted.

17. Registrant denies each and every allegation of Paragraph 17.

18. Paragraph 18 is admitted.

19. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 19 of the Petition for Cancellation, and leaves Petitioner to its proofs.

20. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 20 of the Petition for Cancellation, and leaves Petitioner to its proofs.

21. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 21 of the Petition for Cancellation, and leaves Petitioner to its proofs.

22. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegation of Paragraph 22 of the Petition for Cancellation, and leaves Petitioner to its proofs.

23. Registrant denies each and every allegation of Paragraph 23 of the Petition for Cancellation.

24. Paragraph 24 is admitted.

25. Registrant admits that MAHIA LE FIG contains the term “mahia.” Registrant denies each and every remaining allegation of Paragraph 25.

26. Registrant denies each and every allegation of Paragraph 26.

27. Registrant admits that the USPTO issued a Notice of Allowance on February 21, 2006. Registrant denies each and every remaining allegation of Paragraph 27.

28. Paragraph 28 is admitted.

29. Paragraph 29 is admitted.

30. Paragraph 30 is admitted.

31. Paragraph 31 is admitted.

32. Registrant denies each and every allegation of Paragraph 32.

33. Paragraph 33 is admitted.

34. Registrant denies each and every allegation of Paragraph 34.

35. Paragraph 35 is admitted.

36. Paragraph 36 is admitted.

37. Paragraph 37 is admitted.

38. Paragraph 38 is admitted.

39. Paragraph 39 is admitted.

40. Paragraph 40 is admitted.

41. Registrant denies that MAHIA can be used as a “product category descriptor”, but admits that if it is used as a trademark by Petitioner, without any house mark or other distinguishing matter on Petitioner’s labels or packaging, that Petitioner may face the risk of injunction, litigation or other legal obstacles.

42. Registrant denies each and every allegation of Paragraph 42.

COUNT I

- 43. Paragraph 43 does not state any allegations to which any response is required.
- 44. Registrant denies each and every allegation of Paragraph 44.
- 45. Registrant denies each and every allegation of Paragraph 45.
- 46. Registrant denies each and every allegation of Paragraph 46.
- 47. Registrant denies each and every allegation of Paragraph 47.
- 48. Registrant denies each and every allegation of Paragraph 48.

COUNT II

- 49. Paragraph 49 does not state any allegations to which any response is required.
- 50. Registrant denies each and every allegation of Paragraph 50.
- 51. Registrant denies each and every allegation of Paragraph 51.
- 52. Registrant denies each and every allegation of Paragraph 52.
- 53. Registrant denies each and every allegation of Paragraph 53.

COUNT III

- 54. Paragraph 54 does not state any allegations to which any response is required.
- 55. Registrant denies each and every allegation of Paragraph 55.
- 56. Registrant denies each and every allegation of Paragraph 56.
- 57. Registrant denies each and every allegation of Paragraph 57.
- 58. Registrant denies each and every allegation of Paragraph 58.
- 59. Paragraph 49 is a legal conclusion to which no response is required.
- 60. Registrant denies each and every allegation of Paragraph 60.
- 61. Registrant admits that the USPTO issued registrations to Registrant. Registrant denies each and every remaining allegation of Paragraph 61.
- 62. Registrant denies each and every allegation of Paragraph 62.

COUNT IV

63. Paragraph 63 does not state any allegations to which any response is required.

64. Registrant denies each and every allegation of Paragraph 64.

65. Registrant denies each and every allegation of Paragraph 65.

66. Registrant denies each and every allegation of Paragraph 66.

67. Registrant denies each and every allegation of Paragraph 67.

AFFIRMATIVE DEFENSES

1. Registrant's marks have been in continuous and exclusive use in interstate commerce since 2006.

2. Registrant's marks were never refused registration by the USPTO for being merely descriptive.

3. Registrant's marks were never refused registration by the USPTO for being generic.

4. The doctrine of foreign equivalents only applies when the foreign language is familiar to an appreciable segment of American consumers, and when it is likely that the ordinary American purchaser would stop and translate the foreign word into its English equivalent. In this case, American consumers would not be familiar with the Moroccan Arabic term for fruit-based spirits, as Petitioner alleges, and would not stop and translate the foreign word into its English equivalent.

5. The doctrine of foreign equivalents should also not be applied when other relevant meanings exist. In this case, Registrant's marks mean "Water of Life."

6. Moroccan Arabic is an obscure language, and foreign words from obscure languages may be so unfamiliar to the American buying public that they should not be translated into English for descriptiveness purposes.

7. The Petition for Cancellation is barred by the doctrine of estoppel, laches and acquiescence.

8. Petitioner's claims are barred in whole or in part by the unclean hands doctrine.

9. Registrant's marks are not descriptive or generic, as Registrant's marks have secondary meaning in that the marks have become distinctive of the goods through Registrant's substantially exclusive and continuous use in commerce since 2006.

WHEREFORE, Registrant prays that the Petition for Cancellation initiated by the Petitioner against Reg. Nos. 3291386, 3234012 be dismissed.

Respectfully submitted,
Attorneys for Registrant

By: /brian gaynor/
Ezra Sutton, Esq.
Brian M. Gaynor, Esq.
Ezra Sutton, PA
Plaza 9, 900 Route 9
Woodbridge, New Jersey 07095
(732) 634-3520
esutton@ezrasutton.com

Dated: March 9, 2011
BMG

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this day of March, 2011 to the attorneys for the Petitioner at the following address:

Adam Kotok
2600 Netherland Avenue, #411
Riverdale, NY 10463

/brian gaynor/
Brian M. Gaynor