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

Proceeding	92056067
Party	Defendant Mother's Nutritional Center, Inc.
Correspondence Address	JESSICA BROMALL SPARKMAN JEFFER MANGELS BUTLER & MITCHELL LLP 1900 AVENUE OF THE STARS, SEVENTH FLOOR LOS ANGELES, CA 90067 UNITED STATES trademarkdocket@jmbm.com
Submission	Answer
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Date	02/06/2015
Attachments	2015-2-6 Respondent's Answer to Second Amended and Consolidated Petition for Cancellation.pdf(17298 bytes)

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

Ava Ruha Corporation dba Mother's Market & Kitchen,

Petitioner,

v.

Mother's Nutritional Center, Inc.,

Respondent.

Cancellation No. 92/056,067

Reg. No. 3,675,056

Mark: MOTHER'S NUTRITIONAL CENTER

Registration Date: September 1, 2009

and

Cancellation No. 92/056,080 (consolidated)

Reg. No. 3,675,020

Mark: MOTHER'S (Stylized)

Registration Date: September 1, 2009

RESPONDENT'S ANSWER TO SECOND AMENDED AND CONSOLIDATED
PETITION FOR CANCELLATION

Respondent Mother's Nutritional Center, Inc. ("Respondent") hereby submits its Answer to the Second Amended and Consolidated Amended and Consolidated Petition for Cancellation (the "SAP") filed by petitioner Ava Ruha Corporation dba Mother's Market & Kitchen ("Petitioner"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Amended Petition bearing the same number.

Respondent responds to the first unnumbered paragraph of the SAP as follows:

Respondent admits that it owns U.S. Reg. Nos. 3,675,020 and 3,675,056, and that those registrations in all respects speaks for themselves. Respondent admits that it has offices in Santa Fe Springs, California. Respondent lacks sufficient knowledge regarding Petitioner to admit or deny allegations regarding Petitioner's trademark registrations, location, or beliefs. Respondent denies that Petitioner is damaged by the continued registration of U.S. Reg. Nos. 3,675,020 and 3,675,056. Except as explicitly admitted and alleged herein, Respondent denies each and every remaining allegation contained in the first unnumbered paragraph of the SAP.

To the extent any additional unnumbered paragraphs, captions or headings in the SAP are treated as allegations, such allegations are hereby denied.

1. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 1 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

2. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 2 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

3. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 3 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

4. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 4 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

5. Respondent admits that U.S. Reg. No. 1,440,871, Exhibit 1 to the SAP, in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 5 of the SAP.

6. Respondent admits that U.S. Reg. No. 4,351,038, Exhibit 2 to the SAP, in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 6 of the SAP.

7. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 7 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

8. Respondent admits that its Application Serial No. 77/340,519 was filed on or about November 29, 2007, and that it in all respects speaks for itself.

9. Respondent admits that the office action attached to the SAP as Exhibit 3 issued on or about March 11, 2008 and in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 9 of the SAP.

10. Respondent admits that it filed the response to office action attached to the SAP as Exhibit 4 on or about September 11, 2008 and that it in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 10 of the SAP.

11. Respondent admits that Exhibit 1, 3 and 4, in all respects speak for themselves. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 11 of the SAP regarding Petitioner's business, and the goods and services that it offers, to admit or deny and, on that basis, denies all such allegations. Respondent denies each and every remaining allegation contained in Paragraph 11 of the SAP.

12. Respondent admits that it filed the response to office action attached to the SAP as Exhibit 5 on or about April 15, 2009, and that it in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 12 of the SAP.

13. Respondent admits that Exhibits 1 and 5 to the SAP in all respects speak for themselves. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 13 of the SAP regarding Petitioner's business, use of trademarks, and the

goods and services that it offers, to admit or deny and, on that basis, denies all such allegations. Respondent denies each and every remaining allegation contained in Paragraph 13 of the SAP.

14. Respondent admits that its Application Serial No. 77/368,478 was filed on or about January 10, 2008, and that it in all respects speaks for itself.

15. Respondent admits that the office action attached to the SAP as Exhibit 7 issued on or about March 11, 2008 and in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 15 of the SAP.

16. Respondent admits that it filed the response to office action attached to the SAP as Exhibit 8 on or about September 11, 2008 and that it in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 16 of the SAP.

17. Respondent admits that Exhibit 2, 7 and 8, in all respects speak for themselves. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 17 of the SAP regarding Petitioner's business, and the goods and services that it offers, to admit or deny and, on that basis, denies all such allegations. Respondent denies each and every remaining allegation contained in Paragraph 17 of the SAP.

18. Respondent admits that it filed the response to office action attached to the SAP as Exhibit 9 on or about April 15, 2009 and that it in all respects speaks for itself. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 18 of the SAP.

19. Respondent admits that Exhibits 2 and 9 to the SAP in all respects speak for themselves. Respondent lacks sufficient knowledge or information regarding the allegations

contained in Paragraph 19 of the SAP regarding Petitioner's business, use of trademarks, and the goods and services that it offers, to admit or deny and, on that basis, denies all such allegations. Respondent denies each and every remaining allegation contained in Paragraph 19 of the SAP.

20. Respondent admits that the Trademark Office concluded that no confusion was likely between Petitioner's and Respondent's respective marks. Except as expressly admitted and alleged herein, Respondent denies each and every remaining allegation contained in Paragraph 20 of the SAP.

21. Respondent denies each and every allegation contained in Paragraph 21 of the SAP.

22. Respondent denies each and every allegation contained in Paragraph 22 of the SAP.

23. Respondent lacks sufficient knowledge or information regarding the allegations contained in Paragraph 23 of the SAP to admit or deny and, on that basis, denies each and every allegation contained therein.

24. Respondent denies each and every allegation contained in Paragraph 24 of the SAP.

25. Respondent denies each and every allegation contained in Paragraph 25 of the SAP.

26. Respondent denies each and every allegation contained in Paragraph 26 of the SAP.

27. Respondent denies each and every allegation contained in Paragraph 27 of the SAP.

28. Respondent denies each and every allegation contained in Paragraph 28 of the SAP.

AFFIRMATIVE DEFENSES

In addition to the foregoing, and as separate and distinct affirmative defenses to Petitioner's claims, Respondent alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Petitioner's SAP is barred because the Petitioner has failed to state facts upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Petitioner's allegations of fraud are not plead with particularity and do not meet either the standards of the Federal Rules of Civil Procedure, as interpreted in either *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1966 (2007) or *In re Bose*, 580 F.3d 1240, 91 U.S.P.Q.2d 1938 (Fed. Cir. 2009).

THIRD AFFIRMATIVE DEFENSE

Petitioner's SAP is frivolous and baseless.

FOURTH AFFIRMATIVE DEFENSE

Petitioner's Petition for Cancellation is barred by laches. Petitioner did not seek cancellation the Respondent's registrations for nearly 4 years.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's Petition for Cancellation is barred by acquiescence. Petitioner did not seek to cancel Respondent's registrations for such a long period of time that it amounts to a relinquishment of any claims by Petitioner to cancel it.

FURTHER AFFIRMATIVE DEFENSES

Respondent is without sufficient information to know at the present time whether additional affirmative defenses may be applicable to this action. Accordingly, Respondent expressly reserves the right to assert further affirmative defenses should it learn that any such defenses are available.

WHEREFORE, Respondent respectfully requests that the SAP be denied, and that judgment be entered in favor of Respondent.

Dated: February 6, 2015

Respectfully submitted,
/S/ JESSICA BROMALL SPARKMAN
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CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing **RESPONDENT'S ANSWER TO SECOND AMENDED AND CONSOLIDATED PETITION FOR CANCELLATION** is being sent via U.S. mail to Petitioner Ava Ruha Corporation dba Mother's Market & Kitchen's attorney of record as follows:

Stephen Z. Vegh
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656

Dated: February 6, 2015


