

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

FIKE'S DAIRY, INC.,

Opposer,

v.

DAISY BRAND, INC.,

Applicant.

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Opposition Number 91159632  
Serial No. 76/488,157



04-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Daisy Brand, Inc., by and through its attorneys, hereby submits its Answer in response to the Notice of Opposition filed by Opposer, Fike's Dairy, Inc., as follows:

To the extent the introductory paragraph is construed to assert any substantive allegations to which a response is necessary, Applicant denies any such allegations.

Regarding the numbered paragraphs set forth in the Notice of Opposition, Applicant asserts:

1. With respect to paragraph 1, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and accordingly denies those allegations of paragraph 1.
2. With respect to paragraph 2, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and accordingly denies those allegations of paragraph 2.
3. With respect to paragraph 3, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and accordingly denies those allegations of paragraph 3.

4. With respect to paragraph 4, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and accordingly denies those allegations of paragraph 4.
5. With respect to paragraph 5, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and accordingly denies those allegations of paragraph 5.
6. With respect to paragraph 6, Applicant admits that it seeks to register DAISY as a trademark for dairy products, namely, sour cream and cottage cheese in International Class No. 29. Applicant further admits its trademark application was filed as an intent to use. However, Applicant denies the remaining allegations as Applicant has used the mark DAISY for sour cream for more than fifteen years.
7. Applicant denies the allegations of paragraph 7.
8. Applicant denies the allegations of paragraph 8.

Applicant prays that this Opposition be dismissed, and that Applicant be granted such other relief to which it may show itself justly entitled.

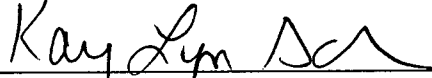
#### FIRST AFFIRMATIVE DEFENSE

##### Laches

1. Upon information and belief, the rights claimed by Applicant in and to the DAISY mark have been known to Opposer for many years and the failure to challenge Applicant's rights in the DAISY mark constitutes laches that bars the present Opposition.

Date: 4-9-04

Respectfully submitted,

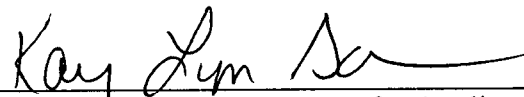


Kay Lyn Schwartz  
GARDERE WYNNE SEWELL LLP  
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DAISY BRAND, INC.

CERTIFICATE OF SERVICE

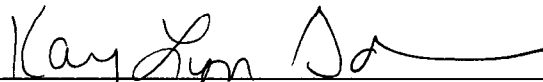
I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed first-class mail, postage prepaid, to Scott A. Schleifstein, Attorney for Opposer, COHEN SILVERMAN ROWAN LLP, 360 Lexington Avenue, New York New York, on the 9<sup>th</sup> day of April, 2004.



Kay Lyn Schwartz, Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION is being deposited, in accordance with 37 C.F.R. 1.8, with the United States Postal Service as first-class mail in an envelope addressed to: BOX: TTAB/NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on this 9<sup>th</sup> day of April, 2004.

  
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Kay Lyn Schwartz, Attorney for Applicant

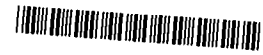
TTAB

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April 9, 2004



04-12-2004

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**BOX: TTAB / NO FEE**  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Applicant's Answer to Notice of Opposition No. 91159632  
Serial No. 76/488,157  
Opposer: Fike's Dairy, Inc.  
Applicant: Daisy Brand, Inc.  
Our File No: 110747-9000

Dear Sir:

Enclosed for filing with the Patent and Trademark Office, please find the following:

1. Applicant's Answer to Notice of Opposition (in triplicate); and
2. Postcard.

It is believed that no additional fee is due. If this is incorrect, or if any other fee is necessary, the Commissioner is hereby authorized to charge any fees that may be required by this paper to Deposit Account No. 07-0153.

Respectfully submitted,

Gardere Wynne Sewell LLP

Kay Lyn Schwartz

KLS/la  
Enclosures

Certificate of Mailing
Date of Deposit: <u>4-9-04</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service First Class Mail service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.
<u>Lisa Alcala</u> (Printed Name)
<u>Lisa A. Alcala</u> (Signature)