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Filing date: **05/27/2005**

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

Proceeding	91164563
Party	Defendant Oberweis Dairy, Inc. Oberweis Dairy, Inc. 951 Ice Cream Drive Sweet One Chicago, IL 60542
Correspondence Address	RICHARD S. STOCKTON BANNER & WITCOFF, LTD. 10 SOUTH WACKER DRIVE, SUITE 3000 CHICAGO, IL 60606 rstockton@bannerwitcoff.com
Submission	Answer
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Date	05/27/2005
Attachments	Answer to Notice of Opposition and Request for Clarification.pdf (6 pages)

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

In the Matter of Trademark Applicant:

INT'L COFFEE & TEA, LLC,

Opposer,

v.

THE OBERWEIS GROUP, INC.,
(by assignment from Oberweis Dairy,
Inc.),

Applicant.

Opp. No. 91164563

Ser. No. 76/475,290

Mark: SIMPLY THE BEST

Published: August 31, 2004

**ANSWER TO NOTICE OF OPPOSITION
AND REQUEST FOR CLARIFICATION**

Commissioner for Trademarks
United States Patent & Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

Attn.: Trademark Trial & Appeal Board

Sir:

Applicant, The Oberweis Group, Inc.,¹ answers the above-captioned Notice of
Opposition as follows:

¹ The Oberweis Group, Inc. is the owner of U.S. App. Ser. No. 76/475,290 by assignment from Oberweis Dairy, Inc. on April 22, 2005. The assignment was recorded in the U.S. Patent and Trademark Office on May 4, 2005 at Reel No. 003077, Frame No. 0621. Applicant respectfully requests that the TTAB update its records accordingly.

1. Applicant is without information sufficient to form a belief as to the truth of the allegations stated in paragraph 1 of the Notice of Opposition, and therefore denies the same.

2. Applicant admits the allegations stated in paragraph 2 of the Notice of Opposition.

3. Applicant admits that, on November 18, 2002, it filed an application for the mark "SIMPLY THE BEST" for "[d]airy products, namely, milk products" in International Class 29; "[i]ce cream" in International Class 30; "[n]on-carbonated and non-alcoholic beverages, namely, iced tea, fruit punch and lemonade" in International Class 32; and "[d]elivery of food products" in International Class 39. Applicant denies the remaining allegations stated in paragraph 3 of the Notice of Opposition.

4. Applicant admits the allegations stated in paragraph 4 of the Notice of Opposition.

5. Applicant denies that "SIMPLY THE BEST" has become descriptive of goods in the food and beverage industry, including the dairy industry. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations stated in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Applicant denies the allegations stated in paragraph 6 of the Notice of Opposition.

7. Applicant is without information sufficient to form a belief as to the truth of the allegations stated in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant denies the allegations stated in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations stated in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations stated in paragraph 10 of the Notice of Opposition.

11. Applicant admits that, pursuant to Section 33(a) of the Lanham Act, “[a]ny registration . . . of a mark registered on the principal register . . . shall be prima facie evidence . . . of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration” Applicant denies that registration of Applicant’s mark would be a source of damage and or injury to CBTL. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations stated in paragraph 11 of the Notice of Opposition, and therefore denies the same.

WHEREFORE, Applicant prays that the Opposition be dismissed.

REQUEST FOR CLARIFICATION

The Notice of Opposition states that “[a] check in the amount of \$300 for payment of the filing fee for this Opposition is enclosed.” Pursuant to 37 C.F.R. § 2.6(a)(17), this amount is the fee for filing a Notice of Opposition *per class*. As Applicant’s Ser. No. 76/475,290 is a four-class application, Applicant respectfully requests clarification as to whether only one class is being opposed and, if so, an identification of that class.

Respectfully submitted, this 27th day of May, 2005.



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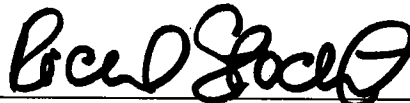
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND REQUEST FOR CLARIFICATION has been served on Opposer in the above-captioned proceeding via hand delivery on May 27, 2005 to:

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