

**In The United State Patent and Trademark Office
Before the Trademark Trial and Appeal Board**

In the Matter of

Trademark Application Serial No. 77/170,441

For the Mark: Yo Berry (Stylized)

Published in the *Official Gazette* on October 30,2007

Pinkberry, Inc.

Opposer

v.

Opposition Number: 91181555

Joontack Lee, an individual,

Applicant

ANSWER TO OPPOSITION

Applicant, Joontack Lee, who resides in the address of 19471 Burgundy Way Saratoga, CA 95070 (Change of Address applied on January 15, 2008 from 2348 Karen Dr. Santa Clara, CA 95051 to the current mentioned), and filed the Trademark Application serial No. 77/170,441, (hereinafter "Applicant") hereby submits the answer to the Opposition filed by Opposer Pinkberry, Inc. having a place of business at 2212 W. Washington Boulevard, Los Angeles, CA 90018 (hereinafter "Pinkberry" or "Opposer"). The answer to the Opposition is as follows.



02-04-2008

1. Applicant admits that since at least as early as January 31, 2005, Opposer has been using its Pinkberry Marks on and in connection with frozen yogurt, frozen yogurt bases, frozen yogurt based desserts combined with fruit, nuts, cereal and shaved ice and rice cakes, frozen confectionary, smoothies, blended beverages, shaved ice and restaurant services, when applied to Opposer's goods of Reg. No.3302143.

Regarding paragraph 1(b) and 1(c), even though Opposer's 477 Application was filed, 477 Application has not been amended to allege actual use of the mark and Applicant currently has no knowledge of any use by Opposer of the mark of Opposer's 477 Application. Applicant lack information sufficient to form a belief as to the other allegations in paragraph 1 of the Notice of Opposition, and on that basis, denies same.

2. Applicant has no knowledge of any actual use of the mark of Opposer's 477 Application. Applicant lacks knowledge sufficient to form a belief as to the allegations in paragraph 2 of the Notice of Opposition, and on that basis, Applicant, in its answer, denies same.

3. Applicant admits Opposer's allegations in paragraph 3, reciting that on or about May 1, 2007, a date well after Opposer's first use of the Pinkberry Marks, and after the filing dates of Opposer's trademark applications 441 Application was filed under section 1(b) for the goods and services: "retail store services featuring frozen yogurts, gelatos, smoothies and waffles."

4. Applicant admits that Opposer made prior use of the Pinkberry Marks in the United States, and denies all other allegations in paragraph 4 of the Notice of Opposition.

5. Applicant denies all of allegations in paragraph 5 of the Notice of Opposition.

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

7. Applicant admits that intentional, material misrepresentations constitute fraud on the Patent & Trademark Office. However, Applicant, in its answer, denies the allegation in paragraph 7 that Applicant made false statements. Applicant denies all other allegations of the claim in paragraph 7 of the Notice of Opposition.

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

9. Applicant admits Opposer's allegation asserting that on or about May 4, 2006, a year before the filing date of the 441 Application, Opposer filed application serial number 78876538 for the mark Pinkberry, for "frozen yogurt and frozen yogurt based desserts combined with fruit, nuts, cereal and shaved ice and rice cakes," in Int. CL. 30, and "smoothies," in Int. CL. 32, and on October 2, 2007, application serial number 78876538 registered on the Principal Register as United States Trademark Registration No. 3302143. Applicant denies other allegations set forth in paragraph 9 of the Notice of Opposition.

10. Applicant admits Opposer's allegation asserting that on or about May 4, 2006, a year before the filing date of the 441 Application, Opposer filed application serial number 78876477 for the Stylized Pinkberry and Swirl Design Mark, as shown in paragraph 1(b), for "frozen yogurt and frozen yogurt based desserts combined with fruit, nuts, cereal and shaved ice and rice cakes," in Int. CL. 30, and "smoothies," in Int. CL. 32, The serial No. 78876477 Application is still pending. Applicant denies other allegations set forth in paragraph 9 of the Notice of Opposition.

11. Applicant admits the allegation shown in paragraph 12 of the Notice of Opposition, asserting that an Extension of Time to Oppose was previously granted by the Trademark Trial & Appeal Board, until and including December 29, 2007.

AFFIRMATIVE DEFENSES

Opposer, in the Notice of Opposition, repetitively asserts that the mark of Yo Berry and the Pinkberry Marks are so similar in paragraph 2, paragraph 4, paragraph 5, paragraph 8, paragraph 9, and paragraph 10, on the basis of insufficient grounds for opposition. Opposer repeats the same ground that such salient similarity is likely to cause confusion, and to cause mistakes. Another ground lies in the comparison of the Applicant's mark of Yo Berry and Opposer's Pinkberry Marks shown in the copy of two mark images in the Notice of Opposition; it only leads to the salient difference between the Mark of Yo Berry and Pinkberry Marks captured at a glance.

The following details of comparison show contrasts.



Pinkberry Mark (Serial No. 78/876,477)



Yo Berry Mark (Serial No. 77/170,441)

a. Word Mark

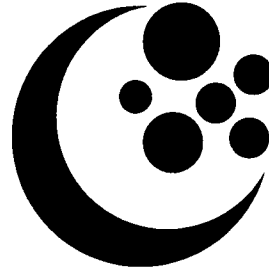
The work BERRY is a common noun that neither individuals nor any organizations keep to themselves. For that reason, it cannot be the object of claim. In addition, there is no definite commonness between "Yo" and "Pink", which does not bear any resemblance or confusion at all. It is considered that a very small number of people might be confused with strawberry, blueberry, blackberry and raspberry.

b. Font

While Pinkberry's font is narrow and round, Applicant's font is bold and angular.



Pinkberry Mark (Serial No. 78/876,477)



Yo Berry Mark (Serial No. 77/170,441)

c. Symbol Mark

The symbol mark of Pinkberry consists of swirl and leaves, representing virtual fruit shape. On the other hand, Applicant shapes the mark to deliver the image of a gelato or yogurt cup or waffle topped with a variety of berries using several small circles in different sizes in a big circle.

Therefore, Applicant respectfully requests that this Opposition of Opposer is to be denied, and Applicant's 77/170,441 Application proceed to registration.

Respectfully submitted,

Joontack Lee

Dated: February 4, 2008.

Joontack lee

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Opposition has been served on Pinkberry, Inc. by mailing said copy on February 4, 2008, via First Class Mail, postage prepaid to:

Clark D. Gross

Irene Y. Lee

Russ, August & Kabat

12424 Wilshire Boulevard, Suite 1200

Los Angeles, California 90025



Joontack lee

Dated: February 4, 2008.