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Filing date: **03/27/2009**

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

Proceeding	91188909
Party	Defendant Zephyr Imports, LLC
Correspondence Address	MARK B. GARRED STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE , SUITE 250 ALISO VIEJO, CA 92656-2681 UNITED STATES
Submission	Answer
Filer's Name	Mark B. Garred
Filer's e-mail	opposition@stetinalaw.com
Signature	/mbg/
Date	03/27/2009
Attachments	answer2opp.pdf (5 pages)(83857 bytes)

Case: ZEPHR-001M

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

In the Matter of Application Serial No. 77/407,881

Bacardi & Company Limited,)	Opposition No. 91188909
)	
Opposer,)	
)	
vs.)	
)	
Zephyr Imports, LLC,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Box TTAB – No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

Applicant, Zephyr Imports, LLC. (hereinafter “Applicant”) hereby responds to the Notice of Opposition as follows:

1. Applicant admits that Opposer is engaged in the advertising, promotion, marketing, distribution and sale of distilled spirits. Applicant is without sufficient information to form a belief as to the remaining allegations in this paragraph and, on that basis, denies those allegations.

2. Applicant is without sufficient information to form a belief as to the allegations in this paragraph and, on that basis, denies those allegations.

3. Applicant is without sufficient information to form a belief as to the allegations of this paragraph and, on that basis, denies those allegations.

4. Applicant is without sufficient information to form a belief as to the allegations of this paragraph and, on that basis, denies those allegations.

5. Applicant admits the allegations of this paragraph.

6. Applicant denies the allegations of this paragraph.

7. Applicant admits that both Applicant and Opposer are engaged in the advertising, promotion, marketing, distribution and sale of distilled spirits. Applicant is without sufficient information to form a belief as to the allegations of this paragraph and, on that basis, denies those allegations.

8. Applicant denies the allegations of this paragraph.

9. Applicant denies the allegations of this paragraph.

10. Applicant denies the allegations of this paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Opposer will not be damaged by registration of Applicant's Mark.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred, in whole or in part, to the extent that there exists no likelihood of confusion between the marks at issue.

THIRD AFFIRMATIVE DEFENSE

Opposer has failed to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Opposer has no standing to assert claims set forth in the Notice of Opposition.

FIFTH AFFIRMATIVE DEFENSE

Opposer's claims are barred insofar as Opposer has abandoned its trademark(s).

SIXTH AFFIRMATIVE DEFENSE

Opposer's product configuration is functional and incapable of protection under trade dress.

SEVENTH AFFIRMATIVE DEFENSE

Opposer's alleged product configuration is not inherently distinctive, lacks secondary meaning, is generic and/or is merely descriptive.

EIGHTH AFFIRMATIVE DEFENSE

Opposer's alleged product configuration was dedicated to the public domain.

NINTH AFFIRMATIVE DEFENSE

Opposer's alleged product configuration is needed by others to effectively compete in the marketplace.

TENTH AFFIRMATIVE DEFENSE

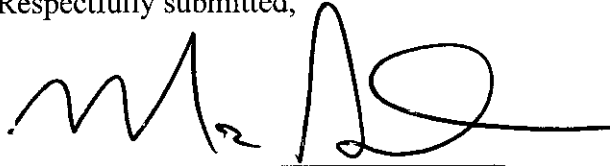
Opposer's mark(s) has not been used in commerce.

ELEVENTH AFFIRMATIVE DEFENSE

Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant prays that this Opposition be dismissed, and that the subject application proceed to registration and for such other and further relief as may be appropriate.

Respectfully submitted,



Dated: March 27, 2009

By:

Mark B. Garred, Reg. No. 34,823
Stetina Brunda Garred & Brucker
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Aliso Viejo, California 92656
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Counsel for Applicant,
Zephyr Imports, LLC


PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **March 27, 2009**, the attached **ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Maria A. Scungio
Edwards Angell Palmer & Dodge LLP
F.D.R. Station P.O. Box 130
New York, NY 10150

Executed on **March 27, 2009** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Andrea Levine