

ESTTA Tracking number: **ESTTA339362**

Filing date: **03/26/2010**

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

Proceeding	91193779
Party	Defendant Branca, Inc.
Correspondence Address	JAMI A. GEKAS WILDMAN, HARROLD, ALLEN & DIXON LLP 225 W. WACKER DRIVE SUITE 2800 CHICAGO, IL 60606 gekas@wildman.com
Submission	Answer
Filer's Name	Jami A. Gekas
Filer's e-mail	gekas@wildman.com, wysocki@wildman.com
Signature	/Jami A. Gekas/
Date	03/26/2010
Attachments	Answer to Opposition 3-26-10.pdf (4 pages)(28044 bytes)

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

In the Matter of Trademark Serial No.	77/535,073
Filed:	July 30, 2008
Mark:	BRANCA
Published for Opposition	August 18, 2009

Fratelli Branca Distillerie S.r.l., Opposer, v. Branca, Inc., Applicant.
--

Opposition No.: 91193779

ANSWER TO NOTICE OF OPPOSITION

Branca, Inc. (“Branca” or “Applicant”), pursuant to 37 C.F.R. § 2.106, and in response to the Notice of Opposition filed by Fratelli Branca Distillerie. S.r.l.(“Fratelli Branca” or Opposer”) states:

1. Since long prior to the priority date of Applicant’s application, Fratelli Branca has extensively used, advertised and promoted the mark “FERNET BRANCA” and “FERNET BRANCA FRATELLI BRANCA E CO” (here in after the “Fratelli Branca Marks”) in the United States for liquors and beverages of various types.

ANSWER: Branca is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 1, and, therefore, denies same and demands strict proof thereof.

2. Fratelli Branca is the owner and user (by assignment or otherwise) of the following U.S. Registrations , among others:

- Registration No. 023,850 registered on November 21, 1893 for FERNET BRANCE FRATELLI BRANCE E CO and Design for “an Anticholera and Tonic Remedy” in Class 005;

- Registration No. 1,583,859, registered on February 20, 1990 for FERNET BRANCA for Bitters Liquer in Class 033.

ANSWER: Branca is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 1, and, therefore, denies same and demands strict proof thereof.

3. The above registrations are valid and subsisting. Status and title copies of the registrations are attached as **Exhibit A-1 to A-2** to the Notice of Opposition.

ANSWER: Exhibits A-1 to A-2 to the Notice of Opposition speak for themselves. The remainder of the allegations in Paragraph 3 contain legal conclusions which require no response. To the extent that a response is required, Branca is without knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of the allegations of Paragraph 3, and, therefore, denies same and demands strict proof thereof.

4. By virtue of the uncompromising and prestigious quality of the goods sold, advertised, and promoted under the Fratelli Branca Marks, the Fratelli Branca Marks have become well-known and has [*sic*] acquired recognition and strength through out the United States.

ANSWER: Branca is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4, and, therefore, denies same and demands strict proof thereof.

5. Upon information and belief, the earliest date upon which Applicant can rely in these proceedings is May 8, 2008.

ANSWER: Branca admits that it claimed a date of first use of May 8, 2008 with respect to the goods in International Class 21 in application Serial No. 77/535,073 (“the ’073 Application”). Branca denies any other implication of the allegations in Paragraph 4.

6. Applicant has no connection what so ever with Fratelli Branca and no permission or license was given by Fratelli Branca Applicant [*sic*] to use the Opposed Mark.

ANSWER: Admitted, insofar as Branca is not formally connected to Opposer and did not seek permission or a license from Opposer prior to filing the '073 Application.

7. Fratelli Branca's use of the Fratelli Branca Marks in connection with liquor and beverages is such that members of the public will perceive the Opposed Mark in close proximity with the Fratelli Branca Marks and mistakenly assume that the Opposed Mark emanates from Fratelli Branca and/or authorized or approved by Fratelli Branca due to its similarity to the Fratelli Branca Marks.

ANSWER: Paragraph 7 contains legal conclusions which require no response. To the extent that a response is required, Branca denies each and every allegation of Paragraph 7.

8. The Opposed Mark so closely resembles Fratelli Branca's previously used and registered marks that its use, in connection with the goods aforementioned, is likely to cause confusion, or to cause mistake or deceive, in violation of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d). Purchasers likely will assume that Fratelli Branca is somehow affiliated with, licenses, or endorses, Applicant's use of the Opposed Mark when Fratelli Branca is not connected in anyway with Applicant or the intended use of the Opposed Mark.

ANSWER: Paragraph 8 contains legal conclusions which require no response. To the extent that a response is required, Branca denies each and every allegation of Paragraph 8.

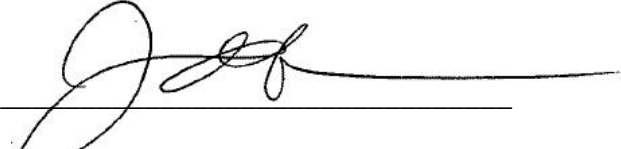
9. Registration of the Opposed Mark will be inconsistent with Fratelli Branca's rights in the aforementioned registrations and Fratelli Branca's rights at common law and will be damaging to Fratelli Branca.

ANSWER: Denied.

Respectfully submitted,

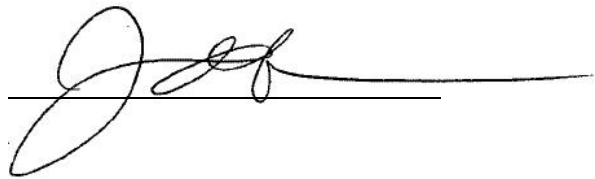
WILDMAN, HARROLD, ALLEN & DIXON LLP

By _____


Jami A. Gekas
Shannon T. Harell
225 West Wacker Drive
Chicago, Illinois 60606-1229
Telephone No.: (312) 201-2000
Facsimile No.: (312) 201-2555

CERTIFICATE OF SERVICE

I, Jami A. Gekas, counsel for Applicant, hereby certify that a copy of Applicant's Answer was served upon G. Franklin Rothwell, Anne M. Sterba, Rothwell, Figg, Ernst & Manbeck, P.C., 1425 K St., N.W., Suite 800, Washington, D.C. 20005 on March 26, 2010, by email and by First Class Mail, proper postage prepaid.

A handwritten signature in black ink, appearing to read "Jami A. Gekas", is written over a horizontal line. The signature is stylized and cursive.