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

Proceeding	91194379
Party	Defendant Adeena Weiss d/b/a Skinny Munch Corp.
Correspondence Address	ADEENA WEISS 28 E JACKSON BLVD., #10A CHICAGO, IL 60604-2263 UNITED STATES adeenajw@aol.com
Submission	Answer and Counterclaim
Filer's Name	Adeena J. Weiss
Filer's e-mail	adeenajw@aol.com
Signature	/s/ Adeena J. Weiss
Date	06/25/2010
Attachments	AJWRESPONSE_skinnymunch1 (2).txt (5 pages)(10891 bytes)

Registration Subject to the filing

Registration No	911254	Registration date	04/13/1971
Registrant	CORNFIELDS, INC. 3898 SUNSET AVENUE WAUKEGAN, IL 60087 UNITED STATES		
Grounds for filing	The registered mark has become the generic name for the goods.		

Goods/Services Subject to the filing

Class U046 (International Class 029, 030). First Use: 1969/09/17 First Use In Commerce: 1969/09/17
All goods and services in the class are requested, namely: FOOD PRODUCTS-NAMELY, SNACK CHIPS OF A CORN MEAL NATURE [, ONION DIP MIXES, AND CANDY]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the matter of Trademark Application No. 77/780, 921
For the Mark of SKINNY MUNCH ? Int. Class 30
Filed on July 14, 2009
Published on December 1, 2009
CORNFIELDS, INC.,)

)
Opposer,)

) Opposition No.

_____)
v.)

ADEENA WEISS,)
d/b/a SKINNY MUNCH CORP.,)

)
)
Applicant.)

)
APPLICANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO OPPOSER'S
NOTICE OF OPPOSITION

NOW COMES APPLICANT, Adeena Weiss, and for her Answer, Affirmative
Defenses and Counterclaim to Opposer's Notice of Opposition, states as
follows:

1. Opposer owns the following U.S. trademark registrations and pending
applications (hereinafter collectively the SKINNY Marks):

Mark
Reg. No./App. No.
Reg. Date

Goods
SKINNY
911,254
4/13/71

Food products, namely snack chips of a corn meal nature, onion dip
mixes and candy

SKINNY STICK
77/826,529

n/a
Potato-based snack foods; Vegetable-based snack food

SKINNY MINIS
77/826,841

n/a
Potato-based snack foods; Vegetable-based snack foods

ANSWER: Applicant admits Opposer owns the Mark ?SKINNY?. Further
answering,
Applicant lacks knowledge or information sufficient to form a belief
as to the truth of the
remaining allegations of Paragraph 1 of the Notice of Opposition, and
accordingly denies the same.

2. According to the U.S. Patent and Trademark Office records, Appli

cant

Adeena Weiss (hereinafter "Applicant") is the owner of record of U.S. Trademark Application Serial No. 77/780,921 for the Mark SKINNY MUNCH for grain-based snack foods which was filed on July 14, 2009 and is based upon a bona-fide intent to use pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. 105(b).

ANSWER: Applicant admits she is the owner of the Mark "SKINNY MUNCH".

Further answering, "SKINNY MUNCH" is, in part, comprised of multiple grains, not including corn. Applicant admits the remaining allegations of Paragraph 2.

3. Opposer is using and has used, via a predecessor-in-interest, the SKINNY Marks since at least as early as 1969 in connection with snack and food products, long prior to Applicant's filing of the application to register the Mark SKINNY MUNCH. Opposer's products are marketed and sold nationally through various distribution channels. Opposer's SKINNY Marks are well known throughout the U.S. and elsewhere.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Notice of Opposition, and accordingly denies the same.

4. Opposer has expended substantial resources to advertise and promote the sale of products under its SKINNY Marks.

ANSWER: Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition, and accordingly denies the same.

5. Since long prior to Applicant's filing of its application to register the Mark SKINNY MUNCH, Opposer has used in interstate commerce its SKINNY Marks in connection with Opposer's broad range of goods including, but not limited to, corn chips, candy, onion dip mixes, potato-based snack foods, and vegetable-based snack foods (hereinafter "Opposer's Goods").

ANSWER: Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice of Opposition, and accordingly denies the same.

6. By reason of Opposer's advertisement, promotion, and use, Opposer's SKINNY Marks have come to be recognized as signifying Opposer's and Opposer's Goods.

ANSWER: Applicant denies the allegations contained in Paragraph 6.

7. Opposer has built up extensive goodwill in connection with the offering and sale of products under its SKINNY Marks.

ANSWER: Applicant denies the allegations contained in Paragraph 7.

8) Notwithstanding Opposer's prior rights in and to its SKINNY Marks, Applicant filed an application, U.S. Serial No. 77/780,921, for registration of the mark SKINNY MUNCH, which Applicant intends to use in connection with "grain-based snack foods" in International Class 30.

This application was published in the December 1, 2009 issue of the Official Gazette (Trademarks) of the United States Patent and Trademark Office, and Opposer was granted a time extension until March 31, 2010 to oppose.

ANSWER: Applicant admits she filed an application for the Mark ? SKINNY

MUNCH?, which is in part, comprised of multiple grains, not including corn. Further answering, Applicant admits that the application was published in the Official Gazette. Applicant admits Opposer requested an extension of time to file their opposition and was granted same. Applicant admits the remaining allegations.

9. Applicant?s proposed trademark SKINNY MUNCH is identical and/or confusingly similar to Opposer?s SKINNY Marks, and the proposed use and registration by Applicant of the proposed trademark SKINNY MUNCH is likely to cause confusion, deception and mistake among purchasers

ANSWER: Applicant denies the allegations contained in Paragraph 9.

10. Applicant?s proposed trademark SKINNY MUNCH dilutes the distinctive quality of Opposer?s famous SKINNY Marks, and the proposed use and registration by Applicant of the proposed trademark SKINNY MUNCH is likely to cause dilution by blurring.

ANSWER: Applicant denies the allegations contained in Paragraph 10.

Further answering, Applicant states that the Mark ?SKINNY? is not solely attributable to Opposer and states that the Mark ?SKINNY? has already been substantially diluted from 1969 to present as there are numerous food products, both grain and vegetable based, and non-grain and vegetable based, using the Mark ?SKINNY?, in addition to hundreds of other products. Additionally, the Mark ?SKINNY? has already been substantially diluted, blurred and tarnished by third parties. Moreover, ?SKINNY? has become and is generic.

11. Applicant?s application to register and proposed use of the Mark SKINNY MUNCH has and will continue to interfere with Opposer?s SKINNY Marks, and will seriously damage Opposer, its business and its goodwill.

ANSWER: Applicant denies the allegations contained in Paragraph 11.

Further answering, the Mark ?SKINNY? has already been substantially diluted, blurred and tarnished by third parties. Moreover, ?SKINNY? has become and is generic.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed and for any other relief that is just and proper.

AFFIRMATIVE DEFENSES

DEFENSE NUMBER I

Lack of Secondary Meaning

- 1. Opposer?s mark is not inherently distinctive.
- 2. Opposers mark has not attained secondary meaning solely attributable to Opposer.
- 3. Opposer?s mark has not become distinctive in that purchasers do not associate the mark with Opposer alone.

- 4. Opposer's mark is merely descriptive.
- 5. Opposer's mark is generic.

DEFENSE NUMBER II

No Likelihood of Confusion/Fair use

- 1. There is no likelihood of confusion because the marks themselves are not confusingly similar, and/or the goods of the parties are noncompetitive and unrelated. Opposer's food goods are chips of a corn meal nature, onion dip mixes and candy. Applicant's food product does not contain corn, and is not a dip, nor a candy.
- 2. Opposer uses the mark with corn and potato based foods. Applicant's food product does not contain corn or potato.
- 3. Applicant's good is akin to a food product which in part uses grain, in addition to approximately 25 other food ingredients, none of which uses corn or potato.
- 4. There is no likelihood of confusion, mistake or deception because, Applicant's mark is not confusingly similar to the pleaded mark of Opposer. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the term "SKINNY" which, upon information and belief, has been used and registered by numerous third parties in the food and food related-related fields. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant on the term "SKINNY".
- 5. There are a myriad of adoptions and uses of and for goods and services related to the goods and services of the applicant and Opposer, as well as a variety of noncompeting goods and services. As such, any trademark rights that Opposer may have are narrowly circumscribed and any other use would not lead to a likelihood of confusion.

DEFENSE NUMBER III

Attack on Validity of U.S. Trademark Registration

- 1. That Opposer's use of the mark is a use, otherwise than as a trademark or service mark, of a term which is descriptive of, and in good faith used only to describe to users, the goods or services of defendant or their geographic origin.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed and for any other relief that is just and proper.

COUNTERCLAIM

Genericness of Opposer's mark.

- 1. Opposer's mark "SKINNY" is generic in that:
 - (a) it lacks evidence of secondary meaning in the term or mark, and
 - (b) Opposer's past failure to protect its rights, and
 - (c) Absence of objections to misuse of mark by others, and
 - (d) Absence of attempts to prevent misuse of mark by others, and
 - (e) Use of term or mark as common noun rather than adjective descriptive of particular brand by Opposer owner, by competitor, by other members of relative trade or profession, by newspapers, magazines, or other general publications, and/or by relevant section of buying public.

WHEREFORE, Applicant respectfully requests that this Opposition be dismissed, Opposer's mark be cancelled and for any other relief that is just and proper.

Date: June_25_, 2010

Respectfully submitted,

By: /s/ Adeena J. Weiss

Adeena J. Weiss
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Applicant

CERTIFICATE OF SERVICE

The undersigned, an attorney, deposes and states that she has ca
used a
true and correct copy of the foregoing APPLICANT'S ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIM TO OPPOSER'S NOTICE OF OPPOSITION was served
by deposit with the United States Postal Service, First Class, upon:

Richard B. Biagi
Jeremy M. Roe
NEAL & MCDEVITT, LLC
1776 Ash Street
Northfield, IL 60093
Tel: 847.441.9100
Fax: 847.441.0911

on this 25 day of June, 2010.

By: /s/ Adeena J. Weiss

Applicant