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

Proceeding	91196094
Party	Defendant Commercial Food Services
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Opposed Mark: CAFÉ JOSÉ  
U.S. Trademark Application Serial Number 77/775,851

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

Windsor Quality Food Company, Ltd.

Opposer,

v.

Commercial Food Services

Applicant.

Opposition No. \_\_\_\_\_

**ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

Commercial Food Services (“Applicant”), by and through its undersigned counsel hereby answers the Notice of Opposition filed by Windsor Quality Food Company, Ltd. (“Opposer”), as follows:

**ANSWER**

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1, and therefore denies the same.
2. Applicant admits that it is a Utah business having an address at 3481 S. West Temple, Salt Lake City, Utah 84115.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3, and therefore denies the same.

4. Applicant admits that U.S. Registration No. 2,510,986 for the mark JOSE OLE speaks for itself. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 4, and therefore denies the same.

5. Applicant admits that U.S. Registration No. 2,628,945 for the mark JOSE OLE (and design), and U.S. Registration No. 3,110,852 for the mark TASTE THE FIESTA! JOSE OLE (and design) speak for themselves. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5, and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6, and therefore denies the same.

7. Applicant admits that Application Serial No. 77/775,851 for the mark CAFÉ JOSÉ speaks for itself.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8, and therefore denies the same.

9. Applicant objects to the term “very similar” as overly vague, and otherwise denies the allegations set forth in paragraph 9.

10. Applicant denies the allegations set forth in paragraph 10.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

11. Opposer has not stated a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

12. Due to the differences between Opposer's and Applicant's marks, there is no actual confusion or likelihood of confusion, mistake or deception between Applicant's mark CAFÉ JOSÉ and Opposer's marks JOSE OLE, JOSE OLE (and design), and TASTE THE FIESTA! JOSE OLE (and design).

## **THIRD AFFIRMATIVE DEFENSE**

14. Upon information and belief, because of the numerous trademark registrations and applications incorporating the word "Jose," and the numerous uses and marks comprising the word "Jose" existing in the marketplace, Opposer has no grounds to assert exclusive or broad rights in marks comprising the word "Jose."

## **FOURTH AFFIRMATIVE DEFENSE**

15. Upon information and belief, Applicant's use and registration of the CAFÉ JOSÉ mark has not and will not tarnish or jeopardize any alleged goodwill or reputation of Opposer, Opposer's goods, or of the asserted marks.

## **FIFTH AFFIRMATIVE DEFENSE**

16. Opposer is barred from opposing the registration of Applicant's CAFÉ JOSÉ mark by the doctrine of estoppel.

## **SIXTH AFFIRMATIVE DEFENSE**

17. Opposer is barred from opposing the registration of Applicant's CAFÉ JOSÉ mark by the doctrine of waiver, laches, and/or acquiescence.

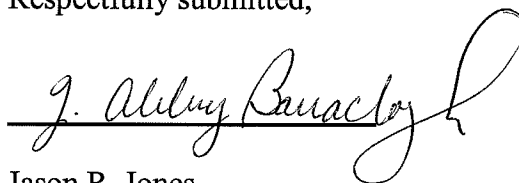
There may be additional affirmative defenses to the opposition alleged by Opposer that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend this

answer to allege additional affirmative defenses in the event discovery of other information indicates they are appropriate.

WHEREFORE, Applicant requests that Application Serial No. 77/775,851 be allowed to proceed to registration to Applicant and that this Opposition be dismissed with prejudice in favor of Applicant.

DATED this 20<sup>th</sup> day of September, 2010.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Abby Barraclough", is written over a horizontal line.

Jason R. Jones  
J. Abby Barraclough  
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES was served upon Opposer's Attorney of Record by the method(s) indicated:

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- Hand Delivery
- United States Mail
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on this 20th day of September, 2010.

