

ESTTA Tracking number: **ESTTA499288**

Filing date: **10/10/2012**

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

Proceeding	91206359
Party	Defendant Beverage Marketing USA, Inc.
Correspondence Address	LISA B LANE FOX ROTHSCHILD LLP PO BOX 5231 PRINCETON, NJ 08543-5231 UNITED STATES ipdocket@foxrothschild.com, ghecht@foxrothschild.com, dmcgregor@foxrothschild.com
Submission	Answer
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Signature	/ Joseph Posillico /
Date	10/10/2012
Attachments	Answer - Honest Tea - 91206359.pdf (5 pages)(21537 bytes)

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

In the matter of Application No. 85448932

Honest Tea, Inc.	:	
	:	
Opposer,	:	Opposition No. 91206359
	:	
v.	:	
	:	
Beverage Marketing USA, Inc.,	:	
	:	
Applicant.	:	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER

Applicant Beverage Marketing USA, Inc., hereby answers the Notice of Opposition of Honest Tea, Inc. as follows:

1. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies said allegations.

2. Applicant admits that Exhibit 1 shows an image of a bottle labeled with the terms "HONEST tea" and "HALF & HALF". Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 2 and therefore denies same.

3. Denied.

4. Applicant admits that Exhibit 2 shows images of bottles labeled with the terms “HALF & HALF” or similar terminology for beverages made from iced tea and lemonade. Applicant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 4 and therefore denies same.

5. Admitted that Exhibit 3 purports to be a printout from UrbanDictionary.com as set forth in the allegation. Applicant denies that it is applicable.

6. Admitted.

7. Admitted.

8. Admitted that the Examiner accepted Applicant’s Section 2(f) Declaration, and approved the mark for publication. Admitted that in two of Applicant’s other applications a Section 2(f) Declaration was not accepted. Applicant denies the remaining allegations of paragraph 8.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted; denied in part. Applicant denies that it has not yet responded to the office action.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied; admitted in part. Applicant admits that it was aware that there were some insubstantial third party uses of the term HALF & HALF in connection with beverages with iced tea and lemonade prior to filing the subject Application. Applicant denies that it was aware of Opposer's use of the term HALF & HALF in connection with beverages made with iced tea and lemonade prior to filing the subject Application, and denies the remaining allegations.

21. Denied.

22. Denied.

23. Admitted.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief can be granted.

2. The Notice of Opposition fails to plead fraud with particularity pursuant to Fed. R. Civ. P. 9.

Wherefore, Applicant prays that the opposition be dismissed and U.S. Application Serial No. 85448932 be issued.

Respectfully submitted,

Beverage Marketing USA, Inc.,

Dated: October 10, 2012

By: /Joseph Posillico/
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER was served on counsel for Opposer via First Class Mail, postage prepaid, on the date listed below, addressed as follows:

NANCY J MERTZEL
DONOVAN & YEE LLP
161 AVENUE OF THE AMERICAS, STE 1201
NEW YORK, NY 10013

Dated: October 10, 2012

By: /-d-/ .
Deanna M. McGregor