

ESTTA Tracking number: **ESTTA499624**

Filing date: **10/11/2012**

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

Proceeding	91206385
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
Filer's Name	Joseph Posillico
Filer's e-mail	ipdocket@foxrothschild.com, ghecht@foxrothschild.com, dmcgregor@foxrothschild.com
Signature	/ Joseph Posillico /
Date	10/11/2012
Attachments	Answer - Nantucket Allserve - 91206385.pdf (5 pages)(22255 bytes)

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

In the matter of Application No. 85448932

Nantucket Allserve, Inc..	:	
	:	
Opposer,	:	Opposition 91206385
	:	
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 Nantucket Allserve, Inc. as follows:

1. Admitted.

2. Applicant denies the allegation that “The Examiner further provided evidence of numerous third parties using the term HALF & HALF in connection with such beverages”, and admits the remaining allegations of paragraph 2 of the Notice of Opposition. Applicant admits that the Examiner attached information to the Office Action issued on February 9, 2012 in support of its statement that the term HALF and HALF refers to a commonly used mix of ice tea and lemonade, of which the applicant’s goods are one.

3. Admitted.

4. Applicant admits that it has filed previous applications for HALF & HALF marks. Applicant admits that application Serial No. 85408502 for HALF & HALF ICED TEA LEMONADE (stylized) was finally rejected on the basis that the mark is merely descriptive. Applicant admits that application Serial No. 85308401 for HALF & HALF ICED TEA LEMONADE was finally rejected on the basis that the mark is merely descriptive or generic. Applicant admits that both of these applications claimed use of the mark in connection with iced tea-based beverages, namely, beverages having a blend of iced tea and lemonade. Applicant admits that Exhibits A and B are copies of the final office actions dated April 12, 2012 with supporting attachments for respective application Serial Nos. 85308401 and 85408502. Applicant denies the remaining allegations of paragraph 4.

5. Admitted

6. Applicant admits that Exhibit C appears to be a print out of a website owned by Applicant. Applicant admits that a description of a product shown on the print out states that the product has “legendary roots as an original beverage combination of half iced tea and half lemonade”. Applicant admits that a description of another product shown on the print out states that it is “of half tea and half lemonade now comes in a caffeine free, kid-friendly version”. Applicant denies the remaining allegations of paragraph 6.

7. Applicant denies each of the allegations set forth in Paragraph 7 of the Notice of Opposition.

8. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and, therefore, denies said allegations.

9. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and, therefore, denies said allegations.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 16 of the Notice of Opposition and, therefore, denies said allegations.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. 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 11, 2012

By: / Joseph Posillico /
Joseph F. Posillico
Fox Rothschild LLP
2000 Market St.
20th Floor
Philadelphia, PA 19103
Attorney for Applicant
215-299-2000
jposillico@foxrothschild.com

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:

PAMELA B HUFF
COX SMITH MATTHEWS INCORPORATED
112 E PECAN ST, STE 1800
SAN ANTONIO, TX 78205
UNITED STATES
ipdocket@coxsmith.com

Dated: October 11, 2012

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