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

Proceeding	91206593
Party	Defendant Kemps LLC
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Date	10/18/2012
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bear Creek County Kitchens, LLC,)	
)	
Opposer,)	
)	Opposition No.: 91206593
v.)	Serial No. 85/533,596
)	Mark: BEAR CREEK CAMEL
Kemps, LLC,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant Kemps, LLC (“Kemps”) for its answer to the Notice of Opposition filed by Opposer Bear Creek Country Kitchens, LLC (“BCKK”), states and alleges as follows:

Except as set forth herein, Kemps denies the allegations in the Notice of Opposition.

With respect to the introductory paragraph of the Notice of Opposition, Kemps denies that the registration of the mark shown in Application Serial No. 85/533,596 (the “Application”) will damage BCKK.

1. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Notice of Opposition and on that basis denies them.

2. Kemps admits that a copy of what appears to be the registration certificate for U.S. Trademark Reg. No. 3,575,719 for the mark BEAR CREEK COUNTRY KITCHENS for “soup mixes; soups” in International Class 29 is attached as Exhibit A to the Notice of Opposition. Kemps denies that the registration certificate for U.S. Trademark Reg. No. 4,166,553 is included in Exhibit A to the Notice of Opposition. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 of the Notice of Opposition and on that basis denies them.

3. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Notice of Opposition and on that basis denies them.

4. Kemps admits only that U.S. Trademark Reg. No. 3,575,719 (attached as Exhibit A to the Notice of Opposition) claims a first use date of March 1, 1992. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the Notice of Opposition and on that basis denies them.

5. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Notice of Opposition and on that basis denies them.

6. Kemps admits that Exhibit B appears to include printouts from the PTO and TESS reflecting the following trademark applications: U.S. Application Ser. No. 85/644,897, filed June 6, 2012, for the mark BEAR CREEK for “[p]ackaged meal mixes consisting primarily of pasta or rice; [p]repared rice” in International Class 30; U.S. Application Ser. No. 85/651,760, filed June 14, 2012, for the mark



for “[p]ackaged meal mixes consisting primarily of pasta or rice; [p]repared rice” in International Class 30; U.S. Application Ser. No. 85/661,963, filed June 26, 2012, for the mark BEAR CREEK COUNTRY KITCHENS 4 ONE CUP SERVINGS GREAT TASTE! JUST ADD WATER plus design for “[p]ackaged meal mixes consisting primarily of pasta or rice; [p]repared rice” in International Class 30; U.S. Application Ser. No. 85/128,932 for the mark BEAR CREEK COUNTRY KITCHENS, filed September 14, 2010, for “[p]ackaged meal mixes consisting primarily of pasta or rice; [p]repared rice” in International Class 30; U.S. Application Ser. No. 85/661,962, filed June 26, 2012, for the mark BEAR CREEK COUNTRY KITCHENS 8 ONE CUP SERVINGS GREAT TASTE! JUST ADD WATER plus design for “[s]oup mixes; [s]oups” in International Class 29; U.S. Application Ser. No. 85/651,758, filed June 14, 2012 for the mark



for “[s]oup mixes; [s]oups” in International Class 29; U.S. Application Ser. No.

85/644,879, filed June 6, 2012, for the mark BEAR CREEK for “[s]oup mixes; [s]oups” in International Class 29; and U.S. Application Ser. No. 85/661,965, filed June 26, 2012 for the mark BEAR CREEK COUNTRY KITCHENS 4 ONE CUP SERVINGS GREAT TASTE! JUST ADD WATER plus design for “[p]ackaged meal mixes consisting primarily of pasta or rice; [p]repared rice” in International Class 30. All of the applications reflected in Exhibit B to the Notice of Opposition are intent-to-use applications. Kemps denies any and all remaining allegations in paragraph 6 of the Notice of Opposition.

7. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Notice of Opposition and on that basis denies them.

8. Kemps admits the allegations in paragraph 8 of the Notice of Opposition.

9. Kemps admits the allegations in paragraph 9 of the Notice of Opposition.

10. Kemps admits the allegations in paragraph 10 of the Notice of Opposition.

11. Kemps admits only that U.S. Trademark Reg. No. 3,575,719 (attached as Exhibit A to the Notice of Opposition) claims a first use date of March 1, 1992. Kemps further states that its use of the BEAR CREEK CAMEL mark pre-dates any alleged use by BCCK of the marks reflected in Exhibit B to the Notice of Opposition. Kemps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 of the Notice of Opposition and on that basis denies them.

12. Kemps denies the allegations in paragraph 12 of the Notice of Opposition.

13. Kemps denies the allegations in paragraph 13 of the Notice of Opposition. Kemps further states that the goods covered by BCCK’s trademark registrations and applications, specifically soup mixes, soups, packaged meal mixes consisting primarily of pasta or rice, and prepared rice are remarkably different from the single good covered by the Application – ice cream. Ice cream is not “closely related” to BCCK’s goods.

14. Kemps denies the allegations in paragraph 14 of the Notice of Opposition.

15. Kemps denies the allegations in paragraph 15 of the Notice of Opposition.

16. Kemps denies the allegations in paragraph 16 of the Notice of Opposition.
17. Kemps denies the allegations in paragraph 17 of the Notice of Opposition.
18. Paragraph 18 of the Notice of Opposition is a request for which no response is necessary. Kemps denies that this Opposition is necessary or proper and or that denial of the Application is justified.

AFFIRMATIVE DEFENSES

19. Registration of the mark BEAR CREEK CAMEL for “ice cream” is unlikely to cause confusion, mistake, or deception with respect to BCCK’s use of the mark BEAR CREEK COUNTY KITCHENS for “soup mixes; soup” or “packaged meal mixes consisting primarily of pasta or rice; prepared rice” because the parties’ respective goods are remarkably different and ice cream is outside BCCK’s zone of natural expansion.

20. Registration of the mark BEAR CREEK CAMEL for “ice cream” is unlikely to cause confusion, mistake, or deception with respect to BCCK’s use of the mark BEAR CREEK for “packaged meal mixes consisting primarily of pasta or rice; prepared rice” or “soup mixes; soups” because the parties’ respective goods are remarkably different and ice cream is outside BCCK’s zone of natural expansion.

21. Registration of the mark BEAR CREEK CAMEL for “ice cream” is unlikely to cause confusion, mistake, or deception with respect to BCCK’s use of the mark  for “packaged meal mixes consisting primarily of pasta or rice; prepared rice” or “soup mixes; soup” because the parties’ respective goods are remarkably different and ice cream is outside BCCK’s natural zone of expansion.

22. Registration of the mark BEAR CREEK CAMEL for “ice cream” is unlikely to cause confusion, mistake, or deception with respect to BCCK’s use of the mark BEAR CREEK COUNTRY

KITCHENS 4 ONE CUP SERVINGS GREAT TASTE! JUST ADD WATER plus design for “packaged meal mixes consisting primarily of pasta or rice; prepared rice” because the parties’ respective goods are remarkably different and ice cream is outside BCCK’s natural zone of expansion.

23. Registration of the mark BEAR CREEK CARAMEL for “ice cream” is unlikely to cause confusion, mistake, or deception with respect to BCCK’s use of the mark BEAR CREEK COUNTRY KITCHENS 8 ONE CUP SERVINGS GREAT TASTE! JUST ADD WATER plus design for “soup mixes; soup” because the parties’ respective goods are remarkably different and ice cream is outside BCCK’s natural zone of expansion.

24. There is no likelihood of confusion between Kemps’ mark and BCCK’s marks because there is no evidence of actual confusion despite the opportunity for confusion to arise in the more than eleven years that Kemps has used its BEAR CREEK CARAMEL mark.

25. The intent-to-use applications reflected in Exhibit B cannot serve as a basis for BCCK’s opposition to the Application because Kemps has been using its BEAR CREEK CARAMEL mark since at least February 1, 2001.

WHEREFORE, Kemps respectfully request that this opposition be dismissed with prejudice and that the Board permit registration of Kemps’ mark as set forth in the Application.

Dated: October 18, 2012

/s/ Laura L. Myers

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ATTORNEYS FOR APPLICANT

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on October 18, 2012, the foregoing document was filed electronically with the Trademark Trial & Appeal Board and that a copy was served on Opposer via U.S. Mail, as follows:

Sheri S. Mason
Thomas F. Dunn
Morse, Barnes-Brown & Pendleton, P.C.
Waltham, MA 02451

Dated: October 18, 2012

/s/ Laura L. Myers
Laura L. Myers

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