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

Proceeding	91208911
Party	Defendant Sunshine C & C, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

<p>Fox Restaurant Concepts LLC</p> <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> <p>Sunshine C & C, Inc.</p> <p style="text-align:center">Applicant.</p>	<p>Opposition No. 91208911</p> <p>Mark(s): ZEN BURGER</p> <p>Serial No. 85677047</p> <p>Published: 12/25/2012</p>
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APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Sunshine C & C, Inc. (“Applicant”) through its undersigned attorney, submits its Answer to the Notice of Opposition (“Opposition”) filed by Fox Restaurant Concepts LLC (“Opposer”) dated January 17, 2013 as follows

In response to the introductory unnumbered paragraph, Applicant denies Opposer’s allegation that it will be damaged by the registration of Application Serial No. 85/677,047 and that there are any grounds to sustain the opposition. In addition Opposer responds that it denies the remaining allegations, if any, in the introductory unnumbered paragraph of the Notice of Opposition.

1. In response to paragraph 1, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 1 of the Opposition, and on that basis, denies each and every allegation in paragraph 1.
2. In response to paragraph 2, Applicant admits that it is a California corporation with its principal place of business at 197 Hilltop Crescent, Walnut Creek, California 94597.

3. In response to paragraph 3, Applicant admits that the records of the Trademark Status and Document Retrieval (“TSDR”) of the United States Patent and Trademark Office (“USPTO”) reflect that Opposer is the owner of U.S. Registration Nos. 4098996, 3582319, 3578742, and 3620050. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 3 of the Notice of Opposition.
4. In response to paragraph 4, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 4 of the Opposition, and on that basis, denies each and every allegation in paragraph 4.
5. In response to paragraph 5, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 5 of the Opposition, and on that basis, denies each and every allegation in paragraph 5.
6. In response to paragraph 6, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 6 of the Opposition, and on that basis, denies each and every allegation in paragraph 6.
7. In response to paragraph 7, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 7 of the Opposition, and on that basis, denies each and every allegation in paragraph 7.
8. In response to paragraph 8, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 8 of the Opposition, and on that basis, denies each and every allegation in paragraph 8.
9. In response to paragraph 9, Applicant denies each and every allegation contained in Paragraph 9 of the Opposition.

10. In response to paragraph 10, Applicant denies each and every allegation contained in Paragraph 10 of the Opposition.
11. In response to paragraph 11, Applicant denies each and every allegation contained in Paragraph 11 of the Opposition.
12. In response to paragraph 12, Applicant denies each and every allegation contained in Paragraph 12 of the Opposition.
13. In response to paragraph 13, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 13 of the Opposition, and on that basis, denies each and every allegation in paragraph 13.
14. In response to paragraph 14, Applicant admits that the records of TSDR of the USPTO reflect that on July 13, 2012, Applicant filed the Application for the standard character word mark ZEN BURGER in international Class 029 for “Veggie Burger Patties” and in international class 043 for “Restaurant and Hotel Services” (the “Application”).
15. In response to paragraph 15, Applicant admits that Opposer sent a letter to counsel for Applicant, informing Applicant of Opposer’s **alleged** rights in the ZINBURGER marks and asking Applicant to withdraw the Application and not commence use of ZEN BURGER. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 15 of the Notice of Opposition.
16. In response to paragraph 16, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 16 of the Opposition, and on that basis, denies each and every allegation in paragraph 16.
17. In response to paragraph 17, Applicant admits that it has provided no indication that it will abandon the Application or its intended use of ZEN BURGER in commerce. Except

as expressly admitted, Applicant denies each and every remaining allegation in paragraph 17 of the Notice of Opposition.

18. In response to paragraph 18, Applicant lacks sufficient information to admit or deny the allegations contained in Paragraph 18 of the Opposition, and on that basis, denies each and every allegation in paragraph 18.

19. In response to paragraph 19, Applicant denies each and every allegation contained in Paragraph 19 of the Opposition.

20. In response to paragraph 20, Applicant denies each and every allegation contained in Paragraph 20 of the Opposition.

21. In response to paragraph 21, Applicant denies each and every allegation contained in Paragraph 21 of the Opposition.

22. In response to paragraph 22, Applicant denies each and every allegation contained in Paragraph 22 of the Opposition.

23. In response to paragraph 23, Applicant denies each and every allegation contained in Paragraph 23 of the Opposition.

24. In response to paragraph 24, Applicant denies each and every allegation contained in Paragraph 24 of the Opposition.

25. In response to paragraph 25, Applicant denies each and every allegation contained in Paragraph 25 of the Opposition.

26. Applicant admits that its Application to register ZEN BURGER covers restaurant services and veggie burgers. Except as expressly admitted, Applicant denies each and every remaining allegation in paragraph 26 of the Notice of Opposition.

27. In response to paragraph 27, Applicant denies each and every allegation contained in Paragraph 27 of the Opposition.
28. In response to paragraph 28, Applicant denies each and every allegation contained in Paragraph 28 of the Opposition.
29. In response to paragraph 29, Applicant denies each and every allegation contained in Paragraph 29 of the Opposition.
30. In response to paragraph 30, Applicant denies each and every allegation contained in Paragraph 30 of the Opposition.
31. In response to paragraph 31, Applicant denies each and every allegation contained in Paragraph 31 of the Opposition.
32. In response to paragraph 32, Applicant denies each and every allegation contained in Paragraph 32 of the Opposition.
33. In response to paragraph 33, Applicant denies each and every allegation contained in Paragraph 33 of the Opposition.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

11. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

12. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial No. **85677047** for the ZEN BURGER word mark.

THIRD AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

13. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark(s) and has a distinct commercial impression from Opposer's claimed mark(s).
14. Applicant's registrations of Applicant's marks does not create a likelihood of confusion among consumers that Applicant's goods are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's marks create a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

FOURTH AFFIRMATIVE DEFENSE
NARROW RIGHTS

15. On information and belief, the common law adoption and use of ZEN and ZIN as prefixes in trademarks is widespread in connection with numerous goods and services, including, without limitation to, restaurant and food related goods and services. Such common law adoption and use required that Opposer's claimed marks be narrowly

construed, such that Opposer's claimed marks cannot—as a matter of law—form the basis of a likelihood of confusion against Applicant's ZEN BURGER mark.

16. The adoption and use of ZEN as a prefix in trademarks is part of federally registered third party marks for numerous goods and services, which are not owned by Opposer, including by way of example the following marks in International class 029 and 043: ZEN BOX (U.S. Registration No. 4184027) for amongst other things restaurant services; ZEN ZEN (U.S. Registration No. 3392080) for amongst other things meat, fish, poultry, and restaurant services; ZEN BENTO (U.S. Registration No. 3286442) for amongst other things restaurant services; ZEN BUFFET (U.S. Registration No. 3250476) for amongst other things restaurant services; ZEN DEN (U.S. Registration No. 3559160) for restaurant services; ZEN ZOO (U.S. Registration No. 3135305) for restaurant services; ZEN Z BAR (U.S. Registration No. 3757160) for amongst other things restaurant services; ZEN Steak & Sushi (U.S. Registration No. 3707911) for restaurant services; Zen Lounge (U.S. Registration No. 3448171) for amongst other things restaurant services; ZEN PALATE (U.S. Registration No. 3529706) for restaurant services; ZESTY ZEN BLEND (U.S. Registration No. 3407053) for frozen vegetables; ZEN ORGANIX (U.S. Registration No. 3329066) for fruit based food bars; DRAGON'S ZEN (U.S. Registration No. 3449392) for amongst other things prepared entrees consisting of meat, fish, poultry, vegetables and restaurant services; and so on. The existence of such registered marks requires that Opposer's claimed marks be narrowly construed, such that Opposer's claimed marks cannot—as a matter of law—form the basis of a likelihood of confusion claim against Applicant's ZEN BURGER mark.

FIFTH AFFIRMATIVE DEFENSE
LACK OF STANDING

17. Opposer's claims are barred, in whole or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

SIXTH AFFIRMATIVE DEFENSE
LACHES

18. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

19. Opposer's claims are barred, in whole or in part, by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

20. Opposer's claims are barred, in whole or in part, because Opposer cannot establish prior exclusive rights in the United States sufficient to bar Applicant's registration of ZEN BURGER.

WHEREFORE, Applicant prays that judgment is as follows:

1. That the Notice of Opposition be dismissed with prejudice;
2. That Application Serial No. 85677047 be allowed to register; and
3. That Applicant be granted further reasonable and appropriate relief.

Dated: February 26, 2013

Respectfully submitted,

/Kuscha Hatami/
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ZEN BURGER

CERTIFICATE OF SERVICE

I Certify that on this 26th day of February, 2013, a true copy of the foregoing Applicant's Answer to Notice of Opposition is being served by mailing a copy thereof by first class mail addressed to the following individuals, identified in the Notice of Opposition as the attorneys of record and correspondent.

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