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

Proceeding	91210232
Party	Defendant S&D Coffee, Inc.
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Date	06/23/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial No. 85/536,854
Published for Opposition on October 16, 2012
Mark: SIMPLY TEA**

SIMPLY ORANGE JUICE COMPANY)	
)	
Opposer,)	
)	
v.)	Opposition No. 91210232
)	
S&D COFFEE, INC.)	
)	
Applicant.)	

ANSWER

Applicant S&D Coffee, Inc. (“Applicant”) hereby responds to the Opposition filed by Opposer Simply Orange Juice Company (“Opposer”) as follows, stating that all allegations not specifically admitted are denied:

In answering the Opposition preamble, Applicant is without sufficient information to form a belief as to the truth of the allegations related to Opposer’s state of organization and place of business and on that basis denies the same. Applicant specifically denies that Opposer will be damaged by registration of Applicant’s SIMPLY TEA trademark (“Applicant’s Mark”). Applicant admits that Applicant filed Trademark Application Serial No. 85/536,854 for Applicant’s Mark on February 8, 2012 and that Applicant’s Mark was published for Opposition on October 16, 2012 for the goods stated in Opposer’s Notice of Opposition. The remainder of Opposer’s preamble constitutes legal statements to which no response is required. To the extent there are any remaining allegations in the preamble, they are denied.

1. Admitted.

2. Applicant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 2 and on that basis denies the same.

3. Applicant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 3 and on that basis denies the same.

4. Answering the allegations set forth in Paragraph 4, Applicant denies that Opposer has any rights in the mark SIMPLY UNFOOLED AROUND WITH. In particular, Applicant is not aware of any use by Opposer of SIMPLY UNFOOLED AROUND WITH and SIMPLY JUICES that would give rise to ownership or rights by Opposer in these marks. Upon information and belief, Opposer appears to be asserting marks in this Opposition that it no longer uses, or never used at all. Applicant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 4 and on that basis denies the same.

5. Answering the allegations set forth in Paragraph 5, Applicant admits that records at the United States Patent and Trademark Office (“Trademark Office”) show that Opposer is the owner of record of registrations for the following marks: SIMPLY ORANGE, SIMPLY APPLE, SIMPLY GRAPEFRUIT, SIMPLY LEMONADE, SIMPLY LIMEADE, SIMPLY CRANBERRY COCKTAIL, SIMPLY CRANBERRY, SIMPLY JUICES and SIMPLY DRINKS. Applicant denies that Opposer owns a registration for the mark SIMPLY UNFOOLED AROUND WITH as the registration was cancelled by the Trademark Office on June 13, 2014 because Opposer did not file an acceptable declaration under Section 8. Applicant denies the allegations in Paragraph 5 to the extent they imply that such registrations are valid or relevant to this proceeding. Applicant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 5 and on that basis denies the same.

6. Applicant admits that Opposer's registrations for SIMPLY ORANGE, SIMPLY LEMONADE, and SIMPLY LIMEADE are incontestable pursuant to 15 U.S.C. § 1065. Applicant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 6 and on that basis denies the same.

7. Answering the allegations set forth in Paragraph 7, Applicant denies that Opposer's SIMPLY UNFOOLED AROUND WITH mark is of "great value" to Opposer as Opposer, upon information and belief, appears to have abandoned this mark. Applicant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 7 and on that basis denies the same.

8. Applicant denies that Applicant is unable to establish priority as to Opposer's SIMPLY UNFOOLED AROUND WITH MARK as that registration has been cancelled. Applicant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 8 and on that basis denies the same.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief may be granted.
2. Opposer will sustain no damage, injury, or prejudice as a result of the registration of Applicant's Mark.

3. Opposer has “unclean hands” in that, upon information and belief, it is asserting marks that it has never used, such as SIMPLY JUICES, or marks that it has abandoned, such as SIMPLY UNFOOLED AROUND WITH.

4. Opposer has “unclean hands” in that its SIMPLY family of marks is deceptively misleading to consumers in that the products sold and marketed in conjunction with the SIMPLY family of marks is, upon information and belief, highly processed, including but not limited to, heating, storage, and manipulation of the oil content.

5. Applicant reserves the right to assert additional defenses as may be warranted by future discovery or investigation in this opposition.

WHEREFORE, Applicant requests that judgment be entered in its favor, that Opposer’s Opposition be dismissed with prejudice, and that Applicant’s Mark be registered.

This 23rd day of June, 2014.

Respectfully submitted,

/Jacob S. Wharton/

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CERTIFICATE OF MAILING

I hereby certify that on June 23, 2014, I filed via electronic means (ESTTA) this ANSWER with the:

U. S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

/Victoria Sharpe/
Victoria Sharpe

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER has been served on Opposer's counsel by mailing said copy on June 23, 2014, via First Class Mail, postage prepaid to:

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