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

Proceeding	91216326
Party	Defendant Continental Mills, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tom Miles,
Opposer

v.

Continental Mills, Inc.,
Applicant.

Opposition No.: 91216326

ANSWER TO AMENDED NOTICE OF
OPPOSITION

Application No. 85823549
International Classes: 29 and 30

ANSWER

Applicant Continental Mills, Inc., ("Applicant"), owner of application serial no. 85823549 (the "Application") for the mark REAL FOOD FOR REAL PEOPLE and Design (the "Mark"), by and through its undersigned counsel, hereby submits this answer to the Amended Notice of Opposition as follows:

Applicant denies that Tom Miles ("Opposer") would be damaged by the registration of the Application.

1. Applicant lacks knowledge or information sufficient to form a belief as to the allegations found in Paragraph 1, and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the alleged "registration for snack foods that contain seeds" found in Paragraph 2, and therefore denies the same. Paragraph 2 otherwise contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 2.
3. Applicant lacks knowledge or information sufficient to form a belief as to the alleged similarity of "the goods" found in Paragraph 3, and therefore denies the same. Paragraph 3 otherwise contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 3.
4. Applicant admits that the filing date of the Application is January 15, 2013. Applicant lacks knowledge or information sufficient to form a belief as to the allegations of "first use" of the Opposer's slogan found in Paragraph 4, and therefore denies the same. Paragraph 4 otherwise contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 4.
5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 5.

6. Applicant denies the allegations in Paragraph 6.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 7.

8. Applicant admits that the goods listed in the Application are as follows: “Organic and non-organic foods, namely, dehydrated fruit and fruit snacks; frozen vegetables; trail mix consisting primarily of processed nuts and dried fruit and also including blended yogurt chips; snack mix consisting of wasabi peas, processed nuts, processed edamame and also including sesame sticks; kale chips; trail mixes consisting primarily of processed nuts and dried fruit; trail mixes consisting primarily of processed nuts, dried fruit and also including chocolate; trail mixes consisting primarily of processed nuts and seeds; trail mixes consisting primarily of processed nuts and also including processed grains; trail mixes consisting primarily of processed nuts, dried fruit and also including confectionery items; trail mixes consisting primarily of processed nuts, dried fruit and also including coconut milk-based chips; snack mixes consisting of processed nuts and seeds; snack mixes consisting primarily of processed nuts and also including processed grains; snack mixes consisting of processed nuts and also including processed cereal; snack mixes consisting primarily of processed nuts and also including cereal-based snack foods; snack mix consisting of processed nuts, seeds, beans or legumes,” in Class 29; and “Cookies; crackers; prepackaged pasta; sauces, namely, salad dressings, barbeque sauces, tomato sauces, pasta sauces and spaghetti sauces; corn chips; corn tortilla chips; corn chips containing whole grains and seeds; quinoa chips; wheat germ for human consumption; milled flax seed flour; processed cereal-based food to be used as a breakfast food; prepackaged brown rice; prepackaged couscous mix, consisting primarily of couscous, dried pasta, and also including processed garbanzo beans and quinoa; prepackaged, unpopped popcorn kernels,” in Class 30. Applicant further admits that it has applied for the marks NON GMO and Design (serial no. 86228979), SIMPLY BETTER (serial no. 86227601), WILDROOTS (serial no. 85963481) and WILDROOTS and Design (serial no. 85963484) for similar food goods in Classes 29 and 30.

9. Paragraph 9 contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 9.

10. Applicant admits that the Mark is in use in commerce and the Mark is frequently used on products also featuring Applicant’s WILDROOTS mark. Applicant otherwise denies the allegations of Paragraph 10.

11. Applicant admits that, on January 16, 2014, Applicant submitted a Section 7 Request Form to the USPTO for registration no. 3726393. Applicant otherwise denies the allegations of Paragraph 11.

12. Applicant lacks knowledge or information sufficient to form a belief as to the allegations found in Paragraph 12, and therefore denies the same.

13. Paragraph 13 contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 13.

14. Applicant denies the allegation that Applicant did not have a bona fide intent to use all the goods listed in the Application. Paragraph 14 contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the remaining allegations of Paragraph 14.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. Opposer's allegations are barred under the doctrine of laches.
3. Applicant's Mark is not likely to cause confusion, or to cause mistake, or to deceive, or to falsely suggest an association with Opposer.
4. Applicant reserves the right to amend its Answer to add affirmative defenses or counterclaims that are not now known but may later become known through discovery or other means.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed.

DATED March 16, 2015.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this ANSWER was sent via first class U.S. Mail to counsel of record for Opposer on March 16, 2015, as follows:

WENDY PETERSON
NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS, MN 55418
UNITED STATES

Signature: 
Printed Name: John P. Halski

Respectfully submitted,

PERKINS COIE LLP

By: 
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