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

Proceeding	91217486
Party	Defendant Oregon Honey Products LLC
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Attachments	NectarCreek-Opposition-Answer.pdf(218222 bytes)

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

Opposition No. 91217486
Application # 86229370

Brood Soda, LLC,)	
)	
v.)	
)	
Oregon Honey Products LLC d/b/a Nectar)	ANSWER OF NECTAR CREEK TO
Creek Honeywine,)	OPPOSITION OF BROOD SODA, LLC
)	
Applicant)	

Oregon Honey Products LLC d/b/a Nectar Creek ("**Nectar Creek**") 33848 SE Eastgate Circle, Corvallis Oregon submits the following Answer to the Opposition of Brood Soda, LLC, ("**Opposer**"), to registration of the mark of Nectar Creek, BROOD, as set forth in the Application, Serial No. 86229370.

ANSWER

1. Nectar Creek admits the allegations contained in ¶¶1, 3, 6, and 9 of the Notice of Opposition (Note that there is no ¶2 in the Notice of Opposition).
2. Nectar Creek denies the allegations contained in ¶¶5 and 13-17 inclusive of the Notice of Opposition.
3. In response to the allegations contained in ¶10 of the Notice of Opposition, Nectar Creek admits that both marks in question are BROOD but denies the remaining allegations in said paragraph.
4. In response to the allegations contained in ¶¶4, 7, and 8 of the Notice of Opposition, Nectar Creek is without sufficient knowledge or information to form a belief as to the truth or falsity of said allegations and therefore denies the same.
5. In response to the allegations contained in ¶5 of the Notice of Opposition, Nectar Creek:
 - a. Denies that Opposer's goods are "different" from and do not "strictly compete" with other soft drinks.
 - b. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegation of non-use of "soda" or "soft drink" on all of Opposer's labels and therefore denies the same and further states that Opposer's website URL is www.broodsoda.com, its company

name is Brood Soda, LLC, Opposer advertises its goods as those of “Brood Soda”, and Opposer has registered its mark under IC 032, “Soft drinks, namely, Sodas”.

- c. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegation regarding Opposer’s goods being a sophisticated alternative to other sodas and therefore denies the same.
 - d. Denies the remaining allegations in said paragraph not specifically addressed above.
6. In response to the allegations contained in ¶11 of the Notice of Opposition, Nectar Creek:
- a. Denies that the goods of Nectar Creek are closely related to Opposer’s goods.
 - b. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegation of the color of bottles used by Opposer and therefore denies the same. Nectar Creek further states that Opposer’s labels that are used on its bottles, **Exhibit A**, are substantially and materially different from the labels used on the bottles of Nectar Creek, **Exhibit B**. Nectar Creek further states that the appearance and size of its bottles are substantially and materially different from that of the bottles of Opposer.
 - c. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegation as to the reason for consumption of Opposer’s goods and therefore denies the same.
 - d. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of where Opposer’s goods are marketed, how they are used, and whether such places and uses are similar to those of Nectar Creek and therefore denies the same.
 - e. Admits that the goods of Nectar Creek that are marked with the BROOD label are contained in dark bottles and states that large multi-color labels different from the labels of Opposer are placed on Nectar Creek’s bottles, which bottles are of a substantially and materially different size from Opposer’s bottles and are, therefore, substantially and materially different from the bottles of Opposer.
 - f. Denies that the goods of Nectar Creek are substantially similar to the Opposer’s Goods.

- g. Denies the remaining allegations in said paragraph not specifically addressed above.
7. In response to the allegations contained in ¶12 of the Notice of Opposition, Nectar Creek:
- a. Denies that the goods of Nectar Creek and Opposer travel in similar channels of trade and are viewed by the same customers (other than coincidentally and not related to the consumer's purchase).
 - b. Is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of where Opposer's goods are sold, the appeal to customers of those goods and what they are looking for, and whether the customers of the goods of Nectar Creek have similar tastes and therefore denies the same.
 - c. Denies that the goods of Nectar Creek are substantially similar to Opposer's goods.
 - d. Denies the remaining allegations in said paragraph not specifically addressed above.

AFFIRMATIVE PLEADINGS

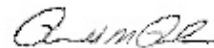
1. Similar marks are not likely to be confused where used in conjunction with a clearly displayed name and/or logo of the manufacture.
2. Marks should be compared side-by-side in their totality.
3. The two marks are not used for related goods, do not emanate from a single source under a single mark, and do not refer to complementary products that would be bought and used together.
4. If, as Opposer states, its goods are a "sophisticated" alternative to sodas, such statement implies that consumers of its products are sophisticated. Where purchasers of goods are sophisticated consumers, the likelihood of confusion is lessened.
5. The likelihood of confusion is to be made solely on the basis of the goods identified in the application and registration. Opposer identifies its goods as "Soft drinks, namely, Sodas" while Nectar Creek identifies its goods as "Mead". Opposer's allegations that its goods are not labeled as soda is irrelevant to the identification of its goods set forth in its application.
6. The fact that goods are beverage related is not dispositive of the likelihood of confusion. Opposer's goods are non-alcoholic while the goods of Nectar Creek are alcoholic. Consumers purchase non-

alcoholic beverages in order to avoid such things as: i) the consumption of alcohol for personal, health, and/or religious reasons; and ii) violating legal age restrictions on the purchase of alcoholic beverages. Since consumers of non-alcoholic beverages would be careful to avoid alcoholic beverages, the degree of care exercised by consumers in making their decision to purchase a non-alcoholic good is particularly relevant. Purchasers of both Opposer's goods and the goods of Nectar Creek are sophisticated consumers and are not likely to be confused by the two different products.

Wherefore, Nectar Creek requests in response to ¶18 of the Notice of Opposition that its mark, BROOD, be registered in IC 033; that the Opposition be denied; and that the Trademark Trial and Appeal Board enter such other orders and rulings consistent with this request as permitted by law, rule, or regulation.

Dated August 26, 2014

Rubin & Zimmerman, PC



By Ronald M. Rubin
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer of Nectar Creek to Opposition of Brood Soda, LLC has been served on counsel set forth below by mailing said copy on August 26, 2014, via First Class Mail, postage prepaid and by email to said counsel set forth below.

Attorneys for Opposer:

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EXHIBIT A

Tendered by Oregon Honey Products LLC



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EXHIBIT B

Tendered by Oregon Honey Products LLC

