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

Proceeding	91219932
Party	Defendant Luis Miguel Ceballos Zamora
Correspondence Address	LUIS MIGUEL CEBALLOS ZAMORA AV PATRIA 844 ZAPOPAN JALISCO 45110, MEXICO mceballos@grupotensa.com,
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Will Denham
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Signature	/Will Denham/
Date	01/30/2015
Attachments	2015.01.30 First Amended Answer (signed).pdf(1115067 bytes )

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

Serial No. 86253193

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Earle M. Jorgensen Company	)	
Opposer	)	
	)	
v.	)	<b>Opposition No. 91219932</b>
	)	
Luis Miguel Ceballos Zamora	)	
Applicant	)	

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**LUIS MIGUEL CEBALLOS ZAMORA’S  
FIRST AMENDED ANSWER<sup>1</sup>**

Applicant Luis Miguel Ceballos Zamora, by and through the undersigned counsel, files this his answer to Opposer Earle M. Jorgensen Company’s Notice of Opposition (the “Notice”) in the above-referenced matter.

Applicant answers as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Notice.
2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Notice.

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<sup>1</sup> This First Amended Answer simply adds the electronic signatures that were unintentionally omitted from the Original Answer.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 of the Notice, particularly in reference to the legal conclusions alleged therein.
4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 of the Notice, particularly in reference to the legal conclusions alleged therein.
5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Notice, except that Applicant denies that Opposer's goodwill and reputation in connection with the mark—if any—would be jeopardized by Applicant's use and registration of the mark EZMETAL.COM.
6. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 of the Notice.
7. Applicant denies the allegations in paragraph 7 of the Notice.
8. Applicant denies the allegations in paragraph 8 of the Notice.
9. Applicant admits that its services pertain to metals in the metal industry.
10. Applicant denies the allegations in paragraph 10 of the Notice.
11. Applicant denies the allegations in paragraph 11 of the Notice.
12. Applicant denies the allegations in paragraph 12 of the Notice.

## **Arguments and Affirmative Defense**

13. Applicant denies that there is any likelihood of confusion between the two marks. Among other things:
- a. the two marks have different prefixes,
  - b. the two marks' different prefixes denote different aspects of a business ("e" often refers to "electronic," as in "e-business", while "ez" often refers to easy-of-use),
  - c. the two marks have different versions of a common word ("metal" versus "metals"),
  - d. Opposer's mark has a hyphen to dis-connect its prefix from its main word, while Opposer's mark has no hyphen or other grammatical differentiator between its prefix and its main word,
  - e. Applicant's mark has a peculiar suffix (".com") while Opposer's mark has none,
  - f. Upon information and belief, Opposer uses its mark only or especially in connection with selling metals for *others'* manufacturing, while Applicant uses and intends to use the mark in connection with selling its *own* manufacturing of metal products (i.e., goods made from metal), and

g. Upon information and belief, Opposer uses its mark only or especially for existing customers, as a mark for internal use, while Applicant uses and intends to use the mark as a marketing tool to capture new customers.

14. Alternatively, and pleading only in the alternative without conceding the Opposer's position, Applicant requests partial cancellation by restriction or modification of Opposer's services listed in Opposer's pleaded registrations, as an equitable remedy, due to Opposer's actual use of its mark—namely, upon information and belief, to: *exchanging information, advice, and counsel to and with existing customers about the quality, prices, and relevant aspects of non-precious metals.*

15. Alternatively, and pleading only in the alternative without conceding the Opposer's position, even if the Board ultimately finds that Opposer is entitled to judgment with respect to Applicant's services as broadly defined in his application, Applicant should still be entitled to registration of his mark with a restricted identification reflecting the actual nature of his services – namely, to: *exchanging information, advice, and counsel to and with existing customers and potential customers about the quality, prices, and relevant*

*aspects of non-precious metal products used in the construction business.*

Wherefore, premises considered, Applicant LUIS MIGUEL CEBALLOS-ZAMORA respectfully requests that the Board (a) deny Opposer's requests for relief, (b) approve his application to register the mark identified in Serial No. 86253193 in Class 35, and (c) grant him all other relief to which he may be entitled.

Respectfully submitted,



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COUNSEL FOR APPLICANT  
LUIS MIGUEL CEBALLOS-ZAMORA

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **LUIS MIGUEL CEBALLOS ZAMORA'S ORIGINAL** has been served on Opposer's Counsel MICHAEL J. MACDERMOTT via email at [pto@cph.com](mailto:pto@cph.com) and by mailing said copy on January 30, 2015, via First Class Mail, postage prepaid to:

Michael J. MacDermott  
CHRISTIE, PARKER & HALE, LLP  
P.O. Box 29001  
Glendale, California 91209-9001

Signature \_\_\_\_\_

Date: January 30, 2015