

ESTTA Tracking number: **ESTTA671813**

Filing date: **05/12/2015**

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

Proceeding	91220760
Party	Defendant TruFood Mfg., Inc.
Correspondence Address	NEAL P PIEROTTI METZ LEWIS BRODMAN MUST O'KEEFE 535 SMITHFIELD ST, SUITE 800 PITTSBURGH, PA 15222-2305 UNITED STATES
Submission	Answer
Filer's Name	Neal P Pierotti
Filer's e-mail	ipdocket@metzlewis.com
Signature	/Neal P Pierotti/
Date	05/12/2015
Attachments	Answerfor91220760.pdf(476119 bytes )

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

FRC Balance LLC	§	
Opposers,	§	
	§	Serial Nos.: 86/065240
v.	§	
	§	Mark: TRUFOOD
TruFood Mfg., Inc.	§	
Applicant.	§	Opposition No. 91220760
	§	
	§	
	§	

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant, TruFood Mfg., Inc. (“Applicant”) by its undersigned attorney, for its answer to the Notice of Opposition filed by opposer FRC Balance LLC (“Opposer”) against its application serial number 86/065240 (“Application”) filed February 20, 2015 with the United States Patent and Trademark Office (“USPTO”), pleads and avers as follows:

1. Certain registrations cited in the Notice of Opposition as being owned by Opposer list Opposer as an Arizona limited liability company while others list Opposer as a Delaware limited liability company and thus Applicant is without knowledge or information sufficient to form a belief as to the truth of this allegation in paragraph 1, and therefore must deny them. Applicant admits the remaining allegations in paragraph 1.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore must deny them.

3. Applicant admits the allegations in paragraph 3.
4. Applicant admits the allegations in paragraph 4.
5. Applicant admits that the registration numbers listed in paragraph 5 correspond to the services listed with the exception that US Reg. No. 4,049,211 is listed on its face in class 43 and not 35 and thus Applicant is without knowledge or information sufficient to form a belief as to the truth of this allegation in paragraph 5, and therefore must deny them. With respect to the remaining allegations of paragraph 5, Applicant is without knowledge or information sufficient to form a belief as to the truth of these remaining allegations in paragraph 5, and therefore must deny them.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore must deny them.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore must deny them.
8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, and therefore must deny them.
9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9, and therefore must deny them.
10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10, and therefore must deny them.
11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, and therefore must deny them.
12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, and therefore must deny them.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13, and therefore must deny them.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, and therefore must deny them.

15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore must deny them.

16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16, and therefore must deny them.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17, and therefore must deny them.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, and therefore must deny them.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19, and therefore must deny them.

20. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20, and therefore must deny them.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and therefore must deny them.

22. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore must deny them.

23. Applicant admits the allegations in paragraph 23.

24. Applicant admits that the classes and descriptions in the allegations of paragraph 24 are those currently assigned to the Application. Applicant denies that the classes and

descriptions in the allegations of paragraph 24 were those that were originally filed with the Application on September 16, 2013.

25. Applicant admits the allegations in paragraph 25.

26. Applicant admits the allegations in paragraph 26.

27. Applicant admits that Applicant manufactures granola products and fruit/nut snack bars, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 27, and therefore must deny them.

28. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, and therefore must deny them.

29. Applicant admits the allegations in paragraph 26.

30. Applicant admits that Mr. Peter S Tsudis is the president of Applicant and that in the article quoted in the allegation of paragraph 30 that in response to the question: "Where do you see the most opportunity for growth over the next five years?" The article says the answer was, "Consumer trends are towards healthy eating, and wanting to understand the foods they eat. They want clean and natural labeling and better nutrition, so by staying on top of consumer desires, we'll be able to capitalize on these trends." Applicant denies the remaining allegations of paragraph 30.

31. Applicant admits that in 2013 documents were filed to cause the name of Tsudis Chocolate Company to be changed to TruFood Mfg., Inc. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31, and therefore must deny them.

32. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32, and therefore must deny them.

33. Applicant admits that the article cited in the allegations in paragraph 33 states that “By the time Pete, a former bank executive, joined the family business in 2001, Tsudis Chocolates had just over 30 employees and a cozy market niche producing fundraising candy bars — the treats school groups and baseball teams earnestly sell door to door. Applicant admits that the article cited in the allegations in paragraph 33 also states that, "But I saw early on that consumer tastes were changing towards more natural products," Tsudis said, "and that the economics were shifting with chocolate prices rising. Which meant we had to respond and make changes based on consumer trends, and we had to get bigger [to stay competitive]." Applicant also admits that the article cited in the allegations in paragraph 33 further states that “Tsudis initially added sugar-free candies and low-carb items into the mix of his company's confections, and in recent years that's evolved into a primary focus on more natural products such as granola and cereal bars.” Applicant is without is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33, and therefore must deny them.

34. Applicant admits that US Reg. No. 3,620,741 has a filing date of June 17, 2008 according to the USPTO database, and that the Application was filed on September 16, 2013. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34, and therefore must deny them.

35. Paragraph 35 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 35.

36. Paragraph 36 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 36.

37. Paragraph 37 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 37.

38. Paragraph 38 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 38.

39. Paragraph 39 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 39.

40. Paragraph 40 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 40.

41. Paragraph 41 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 41.

42. Paragraph 42 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 42.

43. Paragraph 43 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 43.

44. Paragraph 44 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 44.

45. Paragraph 45 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 45.

46. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46, and therefore must deny them.

47. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47, and therefore must deny them.

48. Paragraph 48 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 48.

49. Paragraph 49 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 49.

50. Paragraph 50 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 50.

51. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51, and therefore must deny them.

52. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52, and therefore must deny them.



53. Applicant is unsure as to how “active registrations” and “list” are defined in the allegations of paragraph 53 and is thus without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53, and therefore must deny them.

54. Applicant is unsure as to how “active registrations” and “list” are defined in the allegations of paragraph 54 and is thus without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54, and therefore must deny them.

55. Applicant is unsure as to how “active registrations” and “list” are defined in the allegations of paragraph 55 and is thus without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55, and therefore must deny them.

56. Applicant is unsure as to how “active registrations” and “list” are defined in the allegations of paragraph 56 and is thus without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56, and therefore must deny them.

57. Applicant is unsure as to how “active registrations” and “list” are defined in the allegations of paragraph 57 and is thus without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57, and therefore must deny them.

58. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58, and therefore must deny them.

59. Paragraph 59 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 59.

60. Paragraph 60 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 60.

61. Paragraph 61 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 61.

62. Paragraph 62 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 62.

63. Paragraph 63 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 63.

64. Paragraph 64 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 64.

65. Applicant denies the allegations of paragraph 65.

66. Paragraph 66 states conclusions of law to which no responsive pleading is required; if and to the extent that any response is required, Applicant denies the allegations of paragraph 64.

67. Applicant denies the allegations of paragraph 67.

### **AFFIRMATIVE DEFENSES**

For its further and separate affirmative defenses to the Opposition, Applicant alleges as follows:

1. Opposer's opposition fails to state a claim upon which the requested relief may be granted.

2. Opposer's opposition fails because the parties goods and services are not similar or sold in similar channels of trade, their respective goods and services target distinct and diverse markets, the federal register is replete with extensive third party use of marks that contain elements such as "FOOD", "TRU", "TRUE FOOD", and "TRUE", consumers are familiar with co-existence of competing marks on the register that contain elements such as "FOOD", "TRU", "TRUE FOOD" and "TRUE", the marks are dissimilar from one another, there is no likelihood of confusion between the parties' marks, and there is no false suggestion of a connection.

WHEREFORE, Applicant respectfully requests that the Opposition be denied.

Respectfully submitted,

METZ LEWIS BRODMAN MUST O'KEEFE LLC

By: 

Neal P Pierotti, Esquire  
Reg. No 45716  
535 Smithfield Street, Suite 800  
Pittsburgh, Pennsylvania 15222  
(412) 918-1100

Attorneys for Applicant

Date: May 12, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was deposited in the United States Mail by first class mail, certified, postage prepaid, to Opposer at the address provided below this 12<sup>th</sup> day of May, 2015:

Glenn S Bacal  
Bacal Law Group PC  
6991 East Camelback Road  
Suite D-102  
Scottsdale, AZ 85251  
UNITED STATES

I declare under penalty of perjury of the State of Pennsylvania that the foregoing is true and correct.

METZ LEWIS BRODMAN MUST O'KEEFE LLC



---

Neal P Pierotti, Esq.