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

Proceeding	91222054
Party	Defendant Absente, LLC
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Date	07/01/2015
Attachments	Answer to Notice of Opposition of FERNET MERCURIAL (signed).pdf(124653 bytes )

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

**IN THE MATTER OF TRADEMARK APPLICATION NO. 86376386  
MARK: FERNET MERCURIAL**

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**Fratelli Branca Distillerie S.r.l.,** :

**Opposer,** : **Opposition No. 91222054**

**v.** :

**Absente, LLC** :

**Applicant.** :

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**Commissioner of Patents and Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451**

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Absente, LLC (“Applicant”), by its attorneys Donovan & Yee LLP, hereby answers the Notice of Opposition (the “Opposition”) filed by Fratelli Branca Distillerie S.r.l. (“Opposer”) and asserts its Affirmative Defenses as follows:

1. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Opposition.
2. Applicant denies the allegations set forth in paragraph 2 of the Opposition.
3. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3(a-k) of the Opposition.
4. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 4 of the Opposition.

5. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 5 of the Opposition.

6. Applicant states that there was no Exhibit A contained in the Opposition, and denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Opposition.

7. Applicant denies the allegations set forth in paragraph 7 of the Opposition.

8. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Opposition.

9. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Opposition.

10. Applicant admits the allegations set forth in paragraph 10 of the Opposition.

11. Applicant admits that it is not associated or affiliated with Opposer. Applicant denies that the singular term FERNET is a trademark, that Opposer owns or holds any trademark rights in the singular term FERNET, and all other allegations set forth in paragraph 11 of the Opposition.

12. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Opposition.

13. Applicant denies the allegations set forth in paragraph 13 of the Opposition.

14. Applicant denies the allegations set forth in paragraph 14 of the Opposition.

15. Applicant admits the allegations set forth in paragraph 15 of the Opposition.

16. Applicant denies the allegations set forth in paragraph 16 of the Opposition.

17. Applicant denies the allegations set forth in paragraph 17 of the Opposition.

18. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 18 of the Opposition.

19. Applicant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 19 of the Opposition.

20. Applicant denies the allegations set forth in paragraph 20 of the Opposition.

21. Applicant denies the allegations set forth in paragraph 21 of the Opposition.

**AFFIRMATIVE DEFENSES**

22. Opposer has failed to state a claim upon which relief may be granted.

23. There is no likelihood of confusion because, *inter alia*, Applicant's mark and Opposer's marks are not confusingly similar.

24. The singular term 'fernet' refers to a specific type of alcoholic beverage, and is therefore generic or descriptive when applied to or used in connection with those goods.

25. Opposer's action is barred by laches.

26. Opposer's action is barred by acquiescence.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice.

Dated: New York, New York  
July 1, 2015

Respectfully submitted,  
Donovan & Yee LLP




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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION is being served upon the attorneys of Opposer, on this 1<sup>st</sup> day of July 2015, via First Class mail, postage prepaid to:

Jeffrey B. Sladkus, Esq.  
The Sladkus Law Group  
1827 Powers Ferry Road, Building 6, Suite 200  
Atlanta, GA 30339

  
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Derek Morales