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

Proceeding	91223019
Party	Defendant Prairie Dog Pet Products LLC
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Date	08/31/2015
Attachments	Answer to oppositon by MI Industries TREATS 8 31 15 to file.pdf(524683 bytes)

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

In the matter of Application Serial No. 86/420,496
Published in The *Official Gazette*, March 24, 2015

M.I. INDUSTRIES, INCORPORATED,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223019
)	
PRAIRIE DOG PET PRODUCTS LLC,)	
)	
Applicant.)	
)	
)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**Prairie Dog Pet Products LLC’s ANSWER to Notice of Opposition and
Affirmative Pleadings Amplifying Denials**

The applicant Prairie Dog Pet Products LLC (“Prairie Dog”) hereby answers the Notice of Opposition filed by M.I. INDUSTRIES, INCORPORATED (“Opposer”) and hereby files Affirmative Pleadings Amplifying Denials pursuant to TBMP 311.02(d) and states:

1. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied.

2. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied. The averments are also denied as legal conclusions.

3. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied.

4. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied. The averments are also denied as legal conclusions.

5. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied.

6. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied.

7. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied. The averments are also denied as legal conclusions.

8. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegation is denied. The averments are also denied as legal conclusions.

9. Admitted.

10. Denied. The first use date stated in the application is “[a]t least as early as 08/01/2012.”

11. Denied. It is denied that the Opposer or its affiliates promoted and advertised the sale and/or distribution of Opposer’s goods bearing or offered in connection with Opposer’s marks prior to Prairie Dog’s first use of PRAIRIE DOG TREATS and prior to Prairie Dog’s filing of trademark application for PRAIRIE DOG TREATS. Opposer’s Notice of Opposition does **not** allege the date of the Opposer’s first use of the marks.

12. Denied. Prairie Dog does not have sufficient information to admit or deny this allegation, and under TBMP 311.02(a), the allegations are denied. The averments are also denied as legal conclusions.

13. Denied. The marks of the Opposer and the mark of Prairie Dog are not similar and have completely different meanings. The Affirmative Pleadings Amplifying Denials from below are incorporated herein by reference. The marks do not cause customer confusion and are not likely to cause customer confusion. The averments are also denied as legal conclusions.

The definition of Prairie Dog is that it is a rodent. Merriam- Webster, on-line, August 13, 2015. The definition of Prairie is that it is “a large, mostly flat area of land in North America that has few trees and is covered in grasses.” Merriam- Webster, on-line, August 13 2015.

14. Denied. The averments are denied as legal conclusions and averments in paragraph 13 are incorporated herein by reference. The mark Prairie Dog Treats has not and will not cause damages to the Opposer.

15. Denied. The averments are denied as legal conclusions and averments in paragraph 13 are incorporated herein by reference. The mark Prairie Dog Treats is not likely to cause confusion, mistake or deception with respect to Opposer’s marks.

16. Denied. The averments are denied as legal conclusions and averments in paragraph 13 are incorporated herein by reference. The mark Prairie Dog Treats will not suggest a connection between the Opposer and Prairie Dog.

17. Denied. The averments are denied as legal conclusions. It is denied that the Opposer used its marks in commerce prior to Prairie Dog’s first use of PRAIRIE DOG TREATS. Opposer’s Notice of Opposition does **not** allege the date of the Opposer’s first use of the marks.

Affirmative Pleadings Amplifying Denials pursuant to TBMP 311.02(d)

1. The Prairie Dog's trademark as used is "PRAIRIE DOG" (with antlers above the o) on one line and on the next line is "TREATS" and the letters in TREATS are significantly larger than the letters in PRAIRIE DOG; PRAIRIE DOG is in white and TREATS is in green. There are two distinct parts of the trademark as used—first PRAIRIE DOG and then TREATS. Prairie Dog has four different products which use the distinct part of "Prairie Dog" and then a description of the product and that use is known to customers: Prairie Dog Pet Products (USPTO Serial No. 86418176), Prairie Dog Treats (86418350), Prairie Dog Antlers (86418231), and Prairie Dog Treats (86420496).

2. This is a copy of treats in a package using the trademark PRAIRIE DOG TREATS:

[Space intentionally not used]



PRAIRIE DOG TREATS

Smokehouse Selections

We make simple, healthy products for dogs.

**Chicken
Breast Slices**

Glucosamine and Chondroitin
Added to Support Joint Health

A Treat for Dogs
Net Wt. 10.5oz (297g)

3. The definition of Prairie Dog is:

“any of a genus (*Cynomys*) of gregarious burrowing rodents of the squirrel family chiefly of central and western United States plains; *especially*: a black-tailed rodent (*C. ludovicianus*) that usually lives in extensive colonial burrows.”
Merriam- Webster, on-line, August 13, 2015.

4. This is a picture of a prairie dog:



5. M.I. Industries uses “Prairie” in its marks. The definition of Prairie is that it is “a large, mostly flat area of land in North America that has few trees and is covered in grasses.”
Examples are: “1. Millions of buffalo once roamed the *prairies*. 2. The train tracks extend over miles of *prairie*. Merriam- Webster, on-line, August 13, 2015.

[Space intentionally not unused]

6. This is a picture of a prairie:



7. The following is M.I. Industries' use of the trademark "Prairie." (On line, August 13, 2015). Note that prairie grass is seen on the package using the trademark "Prairie."



8. The following is M.I. Industries' use of the trademark "Homestyle by

Prairie.” (On line, August 13, 2015). Note that “by Prairie” is about 20% of the size of “Homestyle.”



9. When deciding on likelihood of confusion, a key consideration is similarity of the marks. Marks are compared in their entirety for similarities in *appearance, sound, connotation, and commercial impression*. These factors indicate the parties’ marks in this case are very different. The appearance to marketplace consumers is “PRAIRIE DOG TREATS” compared to “Prairie” with a grass prairie in the background or “Homestyle by Prairie.” “PRAIRIE DOG TREATS” sounds much different than “Prairie” and “Homestyle by Prairie.” Regarding the connotation, Prairie Dog means a rodent while Prairie means flat area covered in grasses. The commercial impression is that it is not likely that consumers will consider “PRAIRIE DOG TREATS” to come from the same company which uses “Prairie” with a grass prairie in the background or “Homestyle by Prairie.”

10. The Opposer's marks and Prairie Dog's mark use the word prairie with *completely different meanings*.

WHEREFORE, the Opposer's Opposition must be denied and registration for the mark Prairie Dog Treats should be issued.

Respectfully submitted,

ASTOR WEISS KAPLAN & MANDEL, LLP

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CERTIFICATE OF SERVICE

I, William Mark Mullineaux, certify that a true and correct copy of the forgoing Prairie Dog Pet Products LLC's ANSWER to Notice of Opposition and Affirmative Pleadings Amplifying Denials was served on August 31, 2015 via U.S. First Class Mail, postage prepaid, upon counsel of record for the Opposer at the following address.

**Michael J. Hickey. Esq.
Lewis Rice LLC
600 Washington Ave., Suite 2500
St. Louis, MO 63101**

 /s/wmm

WILLIAM MARK MULLINEAUX