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

Proceeding	91226647
Party	Defendant Food Dudes Delivery, LLC
Correspondence Address	LORI L. WIESE-PARKS Gray Plant Mooty Mooty & Bennett P A PO Box 2906 Minneapolis, MN 55402-0906 trademark@gpmlaw.com;cynthia.hefferan@g
Submission	Answer
Filer's Name	Norman Abramson
Filer's e-mail	norman.abramson@gpmlaw.com, jennifer.veldhuizen@gpmlaw.com
Signature	/Norman Abramson/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Dude IP, LLC,

Opposer,

v.

Food Dudes Delivery, LLC,

Applicant.

Opposition No.: 91226647

Application No.: 86/577,684
Mark: FOOD DUDES

ANSWER TO NOTICE OF OPPOSITION

Dear Commissioner:

ANSWER

COMES NOW, the Applicant Food Dudes Delivery, LLC ("Applicant") to answer the Notice of Opposition in this matter. All allegations not specifically admitted herein are denied. Paragraphs in this Answer correspond with the numbered allegations in the Notice of Opposition.

1. With regard to the allegations in paragraph 1 of the Notice of Opposition, Applicant admits it has filed U.S. Trademark Application No. 86/577,684 for FOOD DUDES for "on-line ordering services in the field of restaurant take-out and delivery" in international class 35 and "food delivery" in international class 39 on March 9, 2015, claiming first use on November 25, 2012 and first use in interstate commerce on November 12, 2009.

2. Applicant lacks sufficient information to affirm or deny the allegations in paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant admits that Opposer is identified on the U.S.P.T.O. website as the owner of U.S. Registration No. 4,702,835 for the mark D.D. DELIVERY DUDES (filed June 2,

2014); U.S. Registration No. 4,702,834 for DELIVERY DUDES (filed June 2, 2014); and U.S. Registration No. 4,101,367 for DELIVERY DUDES (filed March 17, 2011).

4. With regard to the allegations in paragraph 4 of the Notice of Opposition, Applicant denies the marks DELIVERY DUDES and DD DELIVERY DUDES are distinctive. Applicant lacks sufficient information to affirm or deny the remaining allegations in paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant lacks sufficient information to affirm or deny the allegations in paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant lacks sufficient information to affirm or deny Opposer's beliefs set forth in paragraph 6 of the Notice of Opposition. Applicant denies the remaining allegations in paragraph 6.

7. With regard to the allegations in paragraph 7, Applicant admits that the subject trademark application was filed after Registration No. 4,101,367 was issued and that the subject trademark application was filed after Opposer applied for DELIVERY DUDES (Appl. No. 86/297424) and DD DILVERY DUDES (Appl. No. 86/297,480), but denies all other allegations and conclusions in paragraph 7 of the Notice of Opposition. Applicant affirmatively alleges that it was using FOOD DUDES in commerce at the time Opposer or Opposer's assignor filed their applications to register the marks DELIVERY DUDES and DD DELIVERY DUDES.

8. Paragraph 8 of the Notice of Opposition does not require a response from Applicant.

9. With regard to the allegations in paragraph 9 of the Notice of Opposition, Applicant admits it disclaimed exclusive right to use "food" as a trademark apart from the mark FOOD DUDES in the application process, but denies the remaining allegations.

10. Applicant denies the allegations in paragraph 10 of the Notice of Opposition.

11. Applicant denies the allegations in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations in paragraph 12 of the Notice of Opposition and affirmatively alleges that the Examiner approved FOOD DUDES for registration after reviewing Opposer's letter of protest.

13. Applicant denies the allegations in paragraph 13 of the Notice of Opposition and affirmatively alleges that the Examiner approved FOOD DUDES for registration after reviewing Opposer's letter of protest.

14. Applicant denies the allegations in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in paragraph 15 of the Notice of Opposition and affirmatively alleges that the Examiner approved FOOD DUDES for registration after reviewing Opposer's letter of protest.

16. There is no paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations and requested relief in the wherefore clause.

DEFENSES

19. Opposer states a claim upon which relief cannot be granted.

20. Any rights Opposer may have in a mark containing DELIVERY DUDES are inherently weak and have only extremely narrow protection, given the disclaimer of DELIVERY apart from the mark and the diluted and crowded field of marks containing the word DUDES.

21. Opposer's claims are barred by the doctrine of waiver and estoppel as Opposer's assignor of U.S. Registration No. 4,101,367 for DELIVERY DUDES applied for the registration while Applicant's trademark application for FOOD DUDES DELIVERY dated February 4, 2011 (Appl. No. 85/233940) was being actively prosecuted before the Office and neither the Office nor Opposer's assignor claimed that Applicant's FOOD DUDES DELIVERY application or any

other existing application or registration containing "food" or "dudes" was confusingly similar to DELIVERY DUDES.

WHEREFORE Applicant requests that Opposer's claims be dismissed with prejudice and the registration of Applicant's FOOD DUDES mark be issued.

Respectfully Submitted,

Dated: March 29, 2016.

GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.

By: s/Norman M. Abramson

Norman M. Abramson
Email: Norman.Abramson@gpmlaw.com
Lori L. Wiese-Parks
Email: Lori.Wiese-Parks@gpmlaw.com
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-3796
Telephone: (612) 632-3000
Fax: (612) 632-4444

ATTORNEYS FOR FOOD DUDES DELIVERY, LLC

CERTIFICATE OF SERVICE

I hereby certify that this ANSWER TO NOTICE OF OPPOSITION is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to:

Heidi Tandy
Price Benowitz
1691 Michigan Ave., Suite 360
Miami Beach, FL 33139

Dated: March 29, 2016.

s/Norman M. Abramson
Norman M. Abramson

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