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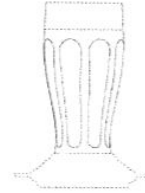
Filing date: **02/21/2017**

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

Proceeding	91227568
Party	Defendant Classic Brands, LLC
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Signature	/Margaret M. Arcaro/
Date	02/21/2017
Attachments	Answer to Amended Notice of Opposition - Big Gulp Opp. No. 91227568.pdf(26755 bytes)

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

AKERUE INDUSTRIES LLC d/b/a)	Opposition No. 91227568
KAY HOME PRODUCTS)	
)	Application Serial No. 86/514,644
Opposer,)	
)	Mark: Design depicted below
v.)	
)	
CLASSIC BRANDS, LLC)	
)	
Applicant.)	



ANSWER TO NOTICE OF OPPOSITION

Applicant Classic Brands, LLC (“Applicant”) answers the Notice of Opposition filed by Akerue Industries LLC d/b/a Kay Home Products (“Opposer”) as follows. To the extent not explicitly admitted, all allegations in the Notice of Opposition are denied.

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations of Paragraph 2 of the Notice of Opposition.
3. Applicant admits that the Application as originally filed identified the goods as “Bird feeders; plastic storage containers for storing and dispensing bird seed.” Applicant denies any remaining allegations of Paragraph 3 of the Notice of Opposition.
4. Applicant admits that Application Serial No. 86/514,644 identifies a first use date of March 1, 2010, and a first use in commerce date of December 15, 2013. Applicant denies any remaining allegations of Paragraph 4 of the Notice of Opposition.
5. Applicant admits that it seeks registration on the Principal Register under 15 U.S.C. § 1052(f) because the Mark has acquired distinctiveness and is entitled to registration. Applicant denies the remaining allegations of Paragraph 5 of the Notice of Opposition.

6. Applicant admits the allegations of Paragraph 6 of the Notice of Opposition.
7. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 7 of the Notice of Opposition and therefore denies the same.
8. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 8 of the Notice of Opposition and therefore denies the same.
9. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 9 of the Notice of Opposition and therefore denies the same.
10. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 10 of the Notice of Opposition and therefore denies the same.
11. Applicant admits that Oppose uses certain designs of Applicant in its bird feeders, but it lacks information sufficient to form a belief as to the remaining allegations of Paragraph 11 of the Notice of Opposition and therefore denies the same.
12. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 12 of the Notice of Opposition and therefore denies the same.
13. Applicant lacks information sufficient to form a belief as to the allegations of Paragraph 13 of the Notice of Opposition and therefore denies the same.
14. Applicant denies the allegations of Paragraph 14 of the Notice of Opposition.
15. Applicant denies the allegations of Paragraph 15 of the Notice of Opposition.
16. Applicant denies the allegations of Paragraph 16 of the Notice of Opposition.
17. Applicant denies the allegations of Paragraph 17 of the Notice of Opposition.
18. Applicant denies the allegations of Paragraph 18 of the Notice of Opposition.
19. Applicant denies the allegations of Paragraph 19 of the Notice of Opposition.
20. Applicant denies the allegations of Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations of Paragraph 21 of the Notice of Opposition.
22. Applicant denies the allegations of Paragraph 22 of the Notice of Opposition.
23. Applicant denies the allegations of Paragraph 23 of the Notice of Opposition.
24. Applicant denies the allegations of Paragraph 24 of the Notice of Opposition.
25. Applicant denies the allegations of Paragraph 25 of the Notice of Opposition.
26. Applicant denies the allegations of Paragraph 26 of the Notice of Opposition.
27. Applicant denies the allegations of Paragraph 27 of the Notice of Opposition.
28. Applicant denies the allegations of Paragraph 28 of the Notice of Opposition.
29. Applicant denies the allegations of Paragraph 29 of the Notice of Opposition.
30. Applicant denies the allegations of Paragraph 30 of the Notice of Opposition.
31. Applicant's summary of customer comments speak for itself, and Applicant denies Opposer's summary of its comments to the extent it misquotes or mischaracterizes the same. Applicant denies the remaining allegations of Paragraph 31 of the Notice of Opposition.
32. Applicant denies the allegations of Paragraph 32 of the Notice of Opposition.
33. Applicant admits that it did not submit sworn declarations from customers as evidence of acquired distinctiveness as part of its Application Serial No. 86/514,627. Applicant denies any remaining allegations of Paragraph 33 of the Notice of Opposition.
34. Applicant denies the allegations of Paragraph 34 of the Notice of Opposition.
35. Applicant states that the November 5, 2015 Response speaks for itself, and Applicant denies the allegations of Paragraph 33 of the Notice of Opposition to the extent it mischaracterizes or is inconsistent with the November 5, 2015 Response. Applicant denies any remaining allegations of Paragraph 35 of the Notice of Opposition.
36. Applicant admits the allegations of Paragraph 36 of the Notice of Opposition.

37. Applicant denies the allegations of Paragraph 37 of the Notice of Opposition.
38. Applicant denies the allegations of Paragraph 38 of the Notice of Opposition.

APPLICANT'S AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief may be granted.
2. Opposer's claims are barred by the doctrines of laches, waiver, estoppel and unclean hands. Opposer has long been aware of Applicant's use of the design depicted in Application Serial No. 86/514,644. During Opposer's unreasonable delay, the design depicted in Application Serial No. 86/514,644 has acquired distinctiveness and has generated substantial goodwill for Applicant. Applicant has relied to its detriment on Opposer's failure to object. Opposer's conduct bars Opposer from obtaining relief by its Notice.

3. Applicant reserves the right to rely on all affirmative defenses that become available or appear through discovery in these proceedings, and Applicant reserves the right to amend its Answer and Affirmative Defenses for the purposes of asserting any such affirmative defenses.

WHEREFORE, Applicant respectfully requests:

- A. that the Opposition be dismissed in its entirety;
- B. that Applicant be awarded its costs and attorneys' fees; and
- C. that Applicant's Application Serial No. 86/514,644 be permitted to proceed to registration.

Date: February 21, 2017

Respectfully submitted,

/Michael Dulin/
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CERTIFICATE OF ESTTA FILING

I hereby certify that a copy of the foregoing paper was filed electronically with the Trademark Trial and Appeal Board via the ESTTA on the 21st day of February, 2017

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CERTIFICATE OF MAIL SERVICE

I hereby certify that a copy of the foregoing paper is being deposited with the U.S. Postal Service by First Class Mail postage prepaid, on February 21, 2017 in an envelope addressed to:

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