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Filing date: **06/05/2017**

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

Proceeding	91232635
Party	Defendant South Shore Slag LLC
Correspondence Address	DAVID G OBERDICK MEYER UNKOVIC & SCOTT LLP 535 SMITHFIELD ST STE 1300 PITTSBURGH, PA 15222 UNITED STATES dgo@muslaw.com, tma@muslaw.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	David G. Oberdick
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Signature	/David G. Oberdick/
Date	06/05/2017
Attachments	Bemsterboer_VitraDustSecondAmendedAnswerOpp.pdf(99550 bytes )

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

<b>ECZACIBASI HOLDING ANONIM SIRKETI,</b>	)	<b>Opposition No. 91232635</b>
	)	
<b>Opposer,</b>	)	<b>Application No. 87/027,253</b>
	)	
<b>v.</b>	)	<b>Mark: VITRADUST</b>
	)	
<b>SOUTH SHORE SLAG LLC,</b>	)	<b><i>ELECTRONICALLY FILED</i></b>
	)	
<b>Applicant.</b>	)	

**SECOND AMENDED ANSWER TO NOTICE OF OPPOSITION**

South Shore Slag LLC (“Applicant”), by and through its attorneys, hereby responds to the individually numbered paragraphs of the Notice of Opposition filed by Eczacibasi Holding Anonim Sirketi (“Opposer”) before the Trademark Trial and Appeal Board as follows:

1. Opposer’s assertion of ownership in Paragraph 1 of the Notice of Opposition states a conclusion of law to which no responsive pleadings is required. The remaining allegations of Paragraph 1 are denied to the extent they seek to interpret or summarize the referenced registration, which is in writing and speaks for itself.

2. Opposer’s assertion of ownership in Paragraph 2 of the Notice of Opposition states a conclusion of law to which no responsive pleadings is required. The remaining allegations of Paragraph 2 are denied to the extent they seek to interpret or summarize the referenced registration, which is in writing and speaks for itself.

3. Paragraph 3 of the Notice of Opposition provides a defined term, to which no responsive pleading is required.

4. The allegations in Paragraph 4 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

5. Admitted.

6. The allegations in Paragraph 6 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

7. The allegations in Paragraph 7 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

8. The allegations in Paragraph 8 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

9. The allegations in Paragraph 9 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

10. The allegations in Paragraph 10 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

11. The allegations in Paragraph 11 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

12. The allegations in Paragraph 12 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

13. The allegations in Paragraph 13 of the Notice of Opposition state conclusions of law to which no responsive pleadings is required. To the extent that a response is required, the allegations are denied.

**AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted.
2. The photocopies of Opposer's certificates of registration submitted with the Opposition are insufficient to show the current status and title of the pleaded registrations.

**AFFIRMATIVE PLEADINGS PURSUANT TO TTAB RULE 311.02(d)**

1. The goods identified with and listed under Opposer's referenced U.S. Registration Nos. 4,541,211 and 4,523,929 for VITRA marks are unrelated to the goods identified with and listed under Applicant's Application Serial No. 87/027,253 for the VITRADUST mark, and there is no overlap in the trade channels, industries, and/or markets for goods/services associated with the respective marks.
2. The parties' respective marks do not create a similar impression in the minds of consumers.
3. The parties' respective marks are not visually and aurally similar.

4. Applicant's VITRADUST mark is not likely to cause confusion, mistake, or deception in the trade or among purchasers as to the source, origin or sponsorship of the parties' respective goods and services.

5. Applicant's VITRADUST mark does not falsely suggest a connection with Opposer's cited marks. The public is not likely to associated the goods/services of Applicant with Opposer's goods/services, and the public is not likely to believe that Applicant's good/services are sponsored, endorsed, or licensed by Opposer, or that there is some relationship between Opposer and Applicant.

6. There is no actual confusion between Applicant's VITRADUST mark and the Opposer's cited marks.

7. Opposer has not established goodwill in its cited marks. The public does not associate the Opposer's marks with Opposer's goods and services, and the public does not know the Opposer's cited marks as an indicator of goods and services that originate from Opposer.

8. Opposer's cited marks are not famous marks.

9. Opposer has suffered no damage or injury as a result of Applicant's VITRADUST mark and/or Applicant's use of this mark.

WHEREFORE, Applicant respectfully requests that Opposer's Notice of Opposition be dismissed with prejudice, and for such other relief as the Board deems just and proper.

Respectfully submitted,

Dated: June 5, 2017

/s/ David G. Oberdick  
David G. Oberdick, Esquire  
Pa. I.D. No. 47648

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South Shore Slag LLC

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<b>SOUTH SHORE SLAG LLC,</b>	)	
	)	
<b>Applicant.</b>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **SECOND AMENDED ANSWER TO NOTICE OF OPPOSITION**, was filed electronically with the TTAB and mailed, via U.S. first class mail postage-paid, on the 5<sup>th</sup> day of June, 2017, to the following:

Otto O. Lee, Esquire  
Intellectual Property Law Group LLP  
12 South First Street, 12th Floor  
San Jose, CA 95113  
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MEYER UNKOVIC & SCOTT, LLP

*/s/ David G. Oberdick*  
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David G. Oberdick, Esquire