

ESTTA Tracking number: **ESTTA809603**

Filing date: **03/27/2017**

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

Proceeding	91232877
Party	Defendant Revolution Foods, Inc.
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Attachments	LUNCH HERO.pdf(36882 bytes )

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8 Mark: LUNCH HERO

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10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
11 **BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

12  
13 HERO AG,

14 Opposer,

15 v.

16 REVOLUTION FOODS, INC.,

17 Applicant.

**ANSWER TO CONSOLIDATED NOTICE  
OF OPPOSITION**

Opposition No. 91232877

Application Nos. 87026789 and 87026793

18

19

20 **ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION**

21 Revolution Foods, Inc. (“Applicant” or “Revolution”) hereby answers the Notice of  
22 Opposition (“Opposition”) filed by Hero AG (“Opposer” or “Hero”). Applicant denies the  
23 allegation in the unnumbered introductory paragraph of the Opposition which states that Opposer  
24 believes that it will be damaged by the issuance of a registration for the mark LUNCH HERO  
25 shown in applications Serial Nos. 87026789 and 87026793 (“Applicant’s Mark”). In response to  
26 the individually numbered paragraphs of the Opposition, Applicant responds as follows:

27 1. Applicant admits the allegations in Paragraph 1.

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1           2.       Applicant admits the allegations in Paragraph 2(a) and 2(b). In response to the  
2 allegations of Paragraph 2(c), Applicant admits that with the permission of the Applicant, the  
3 Examining Attorney added the following disclaimer statement to the record in an Examiner’s  
4 Amendment: “No claim is made to the exclusive right to use ‘LUNCH’ apart from the mark as  
5 shown.” Applicant denies remaining allegations in Paragraph 2.

6           3.       Applicant admits that Opposer is a food company. Applicant is without sufficient  
7 knowledge or information to form a belief as to the truth of the remaining allegations contained in  
8 Paragraph 3, and on that basis denies each and every allegation therein.

9           4.       Applicant admits that Opposer is the owner of record of U.S. Registration  
10 No. 1,230,132 for the design mark HERO & Design for the following goods in Class 29:  
11 “Marmalades, Jams, Jellies, Preserves and Conserves; Fruit Peels and Fruit Glazes for Use in  
12 Making Bakery and Confectionary Products.” Applicant admits that Opposer is the owner of  
13 record of U.S. Registration No. 3,734,250 for the design mark HERO & Design for the following  
14 goods in Class 30: “Honey.” Applicant admits that Opposer is the owner of record of U.S.  
15 Registration No. 3,734,250 for the design mark HERO & Design for the following goods in  
16 Class 32: “Fruit drinks and fruit juices.” Applicant is without sufficient knowledge or information  
17 to form a belief as to the truth of the remaining allegations contained in Paragraph 4, and on that  
18 basis denies each and every allegation therein.

19           5.       Applicant admits that Opposer is the owner of record of U.S. Registration  
20 No. 1,230,132, registered March 8, 1983; U.S. Registration No. 1,495,269, registered July 5, 1988;  
21 and U.S. Registration No. 3,734,250, registered January 5, 2010. Applicant admits that these  
22 registrations are greater than five years old. Applicant is without sufficient knowledge or  
23 information to form a belief as to the allegation that Opposer is the owner of the registrations, the  
24 trademark shown therein, and the good will of Opposer’s business connected with and symbolized  
25 by said trademark, and on that basis denies the allegation. Applicant believes no response is  
26 required to the remaining allegations in Paragraph 5, but to the extent a response is required,  
27 Applicant denies the allegations.

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1           6.       Applicant is without sufficient knowledge or information to form a belief as to the  
2 truth of the remaining allegations contained in Paragraph 6, and on that basis denies each and  
3 every allegation therein.

4           7.       Applicant admits the allegations in Paragraph 7.

5           8.       Applicant admits the allegations in Paragraph 8.

6           9.       In response to the allegations of Paragraph 9, Applicant admits that Applicant’s  
7 goods are food products. Applicant denies the remaining allegations in Paragraph 9.

8           10.      Applicant admits that Applicant’s goods are food products. Applicant is without  
9 sufficient knowledge or information to form a belief as to the truth of the remaining allegations  
10 contained in Paragraph 10, and on that basis denies each and every allegation therein.

11          11.      Applicant is without sufficient knowledge or information to form a belief as to the  
12 truth of the allegations contained in Paragraph 11, and on that basis denies each and every  
13 allegation therein.

14          12.      Applicant admits that its LUNCH HERO mark is claimed for “packaged meal  
15 combination consisting primarily of meat and cheese.” Applicant denies the remaining allegations  
16 in Paragraph 12.

17          13.      Applicant admits that various third parties have obtained U.S., use-based  
18 registrations for HERO-formative marks in International Classes 29 and 30. Applicant is without  
19 sufficient knowledge or information to form a belief as to the truth of the remaining allegations  
20 contained in Paragraph 13, and on that basis denies each and every allegation therein.

21          14.      Applicant denies the allegations in Paragraph 14.

22          15.      Applicant denies the allegations in Paragraph 15.

23          16.      Applicant denies the allegations in Paragraph 16.

24          17.      Applicant admits the allegations in Paragraph 17.

25          18.      Applicant admits that it has acted without specific consent from Opposer.  
26 Applicant denies the remaining allegations in Paragraph 18.

27          19.      Applicant admits that Opposer cannot control the quality of Applicant’s Goods.  
28 Applicant denies the remaining allegations in Paragraph 19.

1           20.     Applicant admits that if Applicant were granted the registrations applied for,  
2 Applicant would obtain the *prima facie* exclusive right to use the mark LUNCH HERO for  
3 Applicant's Goods. Applicant denies the remaining allegations of Paragraph 20.

4           Applicant denies that Opposer is entitled to any relief whatsoever, including the relief  
5 requested in Opposer's prayer for relief. Applicant denies any allegations in the Notice of  
6 Opposition to which it did not specifically respond. Applicant reserves the right to assert any  
7 additional and further defenses as may be revealed by discovery or otherwise.

8   **AFFIRMATIVE DEFENSES**

9           Pursuant to TBMP § 311.02(b) and Rule 8(c) of the Federal Rules of Civil Procedure,  
10 Opposer pleads the following separate and additional defenses, which may be supplemented  
11 during the course of discovery.

12   **FIRST AFFIRMATIVE DEFENSE**

13   **(Estoppel)**

14           The doctrine of estoppel forecloses Opposer's requested relief due to Opposer's prior acts  
15 and admissions, including Opposer's prior representations to the United States Patent and  
16 Trademark Office that: (1) its HERO design mark is not confusingly similar to HERO-formative  
17 marks because such marks do not resemble the "distinctive logo form of [Opposer's] HERO  
18 mark"; and (2) Opposer is no longer claiming exclusive rights to its HERO design mark in  
19 connection with goods such as preserved, frozen, dried and cooked vegetables; vegetable-based  
20 snack foods; meat extracts; fruit and vegetable-based bakery desserts; ready-to-eat cereals;  
21 processed cereals; cereal preparations, namely, cereal bars and cereal-based snack foods; breakfast  
22 cereals; rice-based snack foods; corn-based snack foods; flour, bread; preserved potatoes;  
23 preserved vegetables; sauerkraut; preserved beans; preserved lentils; preserved mushrooms;  
24 preserved fruits and chestnuts; pickles and gherkins; lingonberry and cranberry sauces; goose liver  
25 substitutes consisting of pork liver pate with brewer's yeast; canned meats-namely, pig knuckles,

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27 ///  
28 ///

1 ox tongue, jugged hare, sausage, and potted meats; chocolate and breakfast cereals; pasta products,  
2 namely, cannelloni, ravioli and tortellini; and sauces and gravies excluding apple sauce and  
3 cranberry sauce.

4 Dated: March 27, 2017

COBLENTZ PATCH DUFFY & BASS LLP

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By:                   /s/ Thomas A. Harvey                    
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REVOLUTION FOODS, INC.

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION is being transmitted to the Trademark Office Trademark Trial and Appeal Board Electronic Filing System and served via e-mail on the date and on the parties in the action through their and attorney(s) of record as indicated below

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Dated: March 27, 2016

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