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

Proceeding no.	91234074
Party	Defendant Ocinomled, Ltd.
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Attachments	Southwestern v. Ocinomled Answer and Affirmative Defenses_Opposition No. 91234074.pdf(308316 bytes)

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

Southwestern Management, Inc.,

Opposer,

vs.

Ocinomled, Ltd.,

Applicant.

Opposition No. 91234074

Serial No. 76/577,252

APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES

Applicant Ocinomled, Ltd. (“Applicant”), by and through its attorneys, Chiesa Shahinian and Giantomasi PC, hereby answers the allegations set forth in Opposer Southwestern Management, Inc. (“Opposer”)’s Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and therefore denies the same.
2. Admitted.
3. Denied.
4. Denied
5. Applicant admits that the services for which Applicant seeks to register its trademark are closely related to the services and goods Opposer claims to provide. Applicant denies the remainder of the allegations in Paragraph 5.
6. Denied.
7. Denied.
8. Denied.

9. Paragraph 9 sets forth a legal conclusion for which no response is required. To the extent a response is deemed necessary, Applicant denies the allegations in Paragraph 9.
10. Denied.
11. Denied.
12. Paragraph 12 sets forth a legal conclusion for which no response is required. To the extent a response is deemed necessary, Applicant denies the allegations in Paragraph 12.
13. Denied.
14. To the extent that the allegations of Paragraph 14 refer to specific documents, Applicant respectfully refers the Board to the contents of said documents.
15. To the extent that the allegations of Paragraph 15 refer to specific documents, Applicant respectfully refers the Board to the contents of said Documents.
16. Denied.
17. To the extent that the allegations of Paragraph 17 refer to specific documents, Applicant respectfully refers the Board to the contents of said Documents.
18. To the extent that the allegations of Paragraph 18 refer to specific documents, Applicant respectfully refers the Board to the contents of said Documents.
19. Denied.
20. To the extent that the allegations of Paragraph 20 refer to specific documents, Applicant respectfully refers the Board to the contents of said Documents.
21. To the extent that the allegations of Paragraph 21 refer to specific documents, Applicant respectfully refers the Board to the contents of said documents.

22. To the extent that the allegations of Paragraph 22 refer to specific documents, Applicant respectfully refers the Board to the contents of said documents.

23. To the extent that the allegations of Paragraph 23 refer to specific documents, Applicant respectfully refers the Board to the contents of said Documents.

24. Denied.

25. Paragraph 25 sets forth a legal conclusion for which no response is required. To the extent a response is deemed necessary, Applicant denies the allegations in Paragraph 25.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Applicant incorporates by reference its Answers to paragraphs 1-30 above.

32. Denied.

33. Denied.

34. Denied.

WHEREFORE, Applicant respectfully requests that the Board enter judgment in its favor and against Opposer, denying Opposer's opposition of Application Serial No. 76/577,252 in Class 30 for *steak sauce*.

First Affirmative Defense

The Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Applicant is the senior user of the mark DELMONICO'S.

Third Affirmative Defense

The Notice of Opposition is barred in whole or in part by the doctrine of unclean hands based upon Opposer's conduct, which includes adopting the marks DELMONICO'S; DELMONICO'S ITALIAN STEAKHOUSE; DELMONICO'S STEAK SEASONING in bad faith with the intent of capitalizing on the goodwill associated with Applicant's world-famous DELMONICO'S mark and Applicant's prior rights therein.

Fourth Affirmative Defense

The Notice of Opposition is barred in whole or in part by the doctrine of unclean hands based upon Opposer's conduct, which includes obtaining Opposer's registrations through fraud on the USPTO and making false statements to the Trademark Trial & Appeal Board in this and related proceedings.

Fifth Affirmative Defense

The Notice of Opposition is barred by the doctrines of laches, acquiescence, waiver and/or estoppel.

Sixth Affirmative Defense

Upon information and belief, Opposer does not own valid rights in the mark DELMONICO'S for restaurant services.

Seventh Affirmative Defense

Opposer cannot and will not be harmed by the registration of Application Serial No. 76/577,252.

Eighth Affirmative Defense

Applicant reserves the right, pending the completion of discovery, to assert such

additional defenses as may exist.

WHEREFORE, Applicant prays that the instant Opposition be denied.

Dated: February 3, 2023

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Ocinoled, Ltd.

By: */Peter E. Nussbaum/*_____

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Certificate of Service

It is hereby certified that a true and correct copy of the foregoing Answer and Affirmative Defenses was served via email on the attorney for Southwestern Management Inc.:

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By: /s/ Peter E. Nussbaum/
Peter E. Nussbaum
CHIESA SHAHINIAN & GIANTOMASI PC
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Dated: February 3, 2023