

ESTTA Tracking number: **ESTTA831196**

Filing date: **07/05/2017**

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

Proceeding	91234111
Party	Plaintiff Cave Man Kitchens Inc.
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Submission	Answer to Counterclaim
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Date	07/05/2017
Attachments	Counterclaim Answer Caveman Foods Opposition No. 91234111 [CAVE-2017013].pdf(54150 bytes )

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

CAVE MAN KITCHENS INC.	)	
	)	Opposition No. 91234111
Opposer,	)	
	)	
v.	)	Mark: CAVE MAN
	)	Serial No. 87166881
CAVEMAN FOODS, LLC	)	Filing Date: Sep. 09, 2016
	)	Published: Apr. 11, 2017
Applicant.	)	
	)	Mark: CAVEMAN FOODS
	)	Serial No. 87087186
	)	Filing Date: Jun. 28, 2016
	)	Published: Mar. 21, 2017
	)	
	)	Mark: CAVE MAN & Design
	)	Serial No. 86169105
	)	Filing Date: Jan. 17, 2014
	)	Published: Apr. 04, 2017
	)	
	)	Mark: CAVE MAN & Design
	)	Serial No. 86169099
	)	Filing Date: Jan. 17, 2014
	)	Published: Apr. 04, 2017

**ANSWER TO COUNTERCLAIM**

Opposer, Cave Man Kitchens Inc., answers the COUNTERCLAIM FOR PETITION TO CANCEL OPPOSER’S REGISTRATION NO. 3,222,887 (“Counterclaim”) as follows:

1. Answering Paragraph 1 of the Counterclaim, Opposer admits that U.S. Trademark Application Serial No. 78/899778 was filed on June 2, 2006 by and Registration No. 3,222,887 was issued on March 27, 2007 to Caveman Kitchens Inc. for the mark CAVE MAN KITCHENS for "restaurant services; carry-out and delivery restaurant services; catering services; food preparation services," in International Class 043.
2. Answering Paragraph 2 of the Counterclaim, Opposer admits that Section 8 & 15 Declarations were filed by Caveman Kitchens Inc. on March 27, 2013 in connection with U.S. Trademark Registration 3,222,887.

3. Answering Paragraph 3 of the Counterclaim, Opposer admits that Section 8 & 9 Declarations were filed by Caveman Kitchens Inc. on March 29, 2016 in connection with U.S. Trademark Registration 3,222,887.

4. Opposer denies the allegations set forth in Paragraph 4 of the Counterclaim.

5. Opposer denies the allegations set forth in Paragraph 5 of the Counterclaim.

6. Opposer denies the allegations set forth in Paragraph 6 of the Counterclaim.

7. Paragraph 7 of the Counterclaim constitutes a legal conclusion to which no response is necessary; Opposer nonetheless denies the allegations in Paragraph 7.

8. Opposer admits the truth of the allegations set forth in Paragraphs 1 through 3 of the Counterclaim as incorporated in Paragraph 8, and denies the allegations set forth in Paragraphs 4 through 7 of the Counterclaim as incorporated in Paragraph 8.

9. Opposer denies the allegations set forth in Paragraph 9 of the Counterclaim.

10. Opposer denies the allegations set forth in Paragraph 10 of the Counterclaim.

11. Paragraph 11 of the Counterclaim constitutes a legal conclusion to which no response is necessary; Opposer nonetheless denies the allegations in Paragraph 11.

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**AFFIRMATIVE AND OTHER DEFENSES**

Opposer sets forth its affirmative defenses below. By setting forth these affirmative defenses, Opposer does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Applicant. As separate and distinct affirmative defenses, Opposer alleges as follows:

1. Applicant's Counterclaim fails to state a claim upon which relief may be granted.
2. Opposer reserves the right to assert additional affirmative defenses learned in discovery or otherwise.

Opposer expressly denies any and all allegations in the Counterclaim not expressly admitted above; and for such other and further relief as this Board deems appropriate and just.

WHEREFORE, Opposer requests that the Counterclaim for Petition to Cancel Opposer's Registration No. 3,222,887 be dismissed with prejudice.

Respectfully submitted,

Dated: July 5, 2017

By:  \_\_\_\_\_

Susan L. Stuart  
Adam L.K. Philipp  
Kyle H. Flindt

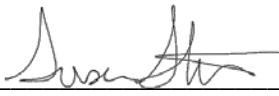
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Attorneys for Opposer

**Certificate of Service**

I hereby certify that on the 5<sup>th</sup> of July, 2017, I caused the foregoing  
ANSWER TO COUNTERCLAIM to be served by email on the following party at the following  
address:

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mmizrahi@wrslawyers.com

By:  \_\_\_\_\_  
Attorneys for Applicant