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

Proceeding	91235850
Party	Defendant Peticolas Brewing Company, LLC
Correspondence Address	JOHN K. BUCHE BUCHE & ASSOCIATES, P.C. 875 PROSPECT ST., SUITE 305 LA JOLLA, CA 92037 Email: jbuche@buchelaw.com, bma@buchelaw.com
Submission	Answer
Filer's Name	Byron E. Ma
Filer's email	bma@buchelaw.com, jbuche@buchelaw.com
Signature	/Byron E. Ma/
Date	09/08/2017
Attachments	2017.09.08_Answer (032).pdf(74813 bytes)

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

Prescott Brewing Company, Inc.,

Opposer,

v.

Peticolas Brewing Company, LLC,

Applicant.

Opposition No. 91235850

Mark: PBC PETICOLAS BREWING
COMPANY 2010 (Stylized/Design)

Serial No.: 87318318

APPLICANT'S ANSWER

Applicant Peticolas Brewing Company, LLC (hereinafter "Applicant" or "Peticolas Brewing"), a Texas limited liability company, having its principal place of business at 2825 Westminster Ave., Dallas, Texas 75205, hereby answers the averments upon which the opposer, Prescott Brewing Company, Inc. (hereinafter "Opposer" or "Prescott Brewing"), an Arizona corporation, having its principal place of business at 130 West Gurley Street, Prescott, Arizona 86301, relies for this opposition of the mark PBC PETICOLAS BREWING COMPANY 2010 (Stylized/Design), which is the subject of Application Ser. No. 87318318 (the "Peticolas Mark"), published in the Official Gazette on July 4, 2017.

Applicant's answers to Opposer's grounds for opposition as set forth in the Notice of Opposition are as follows:

1. In regard to paragraph 1, Applicant denies the Opposer's assertions, except that Applicant admits it has a taproom located in Dallas, Texas.
2. In regard to paragraph 2, Applicant admits the Opposer's assertions.

3. In regard to paragraph 3, Applicant admits the Opposer's assertions.
4. In regard to paragraph 4, Applicant is without sufficient information to admit or deny the allegations and assertions.
5. In regard to paragraph 5, Applicant is without sufficient information to admit or deny the allegations and assertions.
6. In regard to paragraph 6, Applicant is without sufficient information to admit or deny the allegations and assertions.
7. In regard to paragraph 7, Applicant is without sufficient information to admit or deny the allegations and assertions.
8. In regard to paragraph 8, Applicant denies that Opposer has developed goodwill and valuable rights in U.S. Reg. No. 4000733 for "PBC" ("the Prescott Mark"). Applicant is without sufficient information to admit or deny the remaining allegations contained in paragraph 8.
9. In regard to paragraph 9, Applicant admits that Opposer obtained a federal registration for the Prescott Mark on July 26, 2011. Applicant denies the remaining allegations contained in paragraph 9.
10. In regard to paragraph 10, Applicant denies the Opposer's assertions.
11. In regard to paragraph 11, Applicant denies the Opposer's assertions and allegations.
12. In regard to paragraph 12, Applicant denies the Opposer's allegations.
13. In regard to paragraph 13, Applicant admits the Opposer's allegations.
14. In regard to paragraph 14, Applicant denies the Opposer's allegations.

15. In regard to paragraph 15, Applicant denies the Opposer's allegations.

FIRST AFFIRMATIVE DEFENSE

Applicant contends that a comparison of the Applicant's and Opposer's marks and goods/services under the analysis set forth in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), or any other acceptable test for determining a likelihood of confusion, does not support a refusal to register Applicant's application in view of Opposer's registrations. Applicant further contends that Opposer has not and will not be injured or otherwise harmed by Applicant's registration or use of the Peticolas Mark in connection with "beer."

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of estoppels and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of waiver, laches, and/or acquiescence.

There may be additional affirmative defenses to Opposer's NOTICE OF OPPOSITION that are currently unknown to Applicant. Applicant, therefore, reserves the right to amend this ANSWER to allege additional affirmative defenses in the event discovery or other information indicates that they are appropriate.

WHEREFORE, Applicant, having made full answers, prays for judgment in its favor for dismissal of this Opposition, and for allowance of its application.

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Dated: September 8, 2017

Respectfully submitted,

BUCHE & ASSOCIATES, PC

By: /s/ John K. Buche

John K. Buche (CA Bar No. 239477)

Byron E. Ma (CA Bar No. 299706)

Buche & Associates, P.C.

875 Prospect, Suite 305

La Jolla, California 92037

Tel.: 858.459.9111

Fax: 858.459.9120

Email: jbuche@buchelaw.com

Attorneys for Applicant,

Peticolas Brewing Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER has been served on Robert J. Itri, counsel for Opposer, by forwarding said copy on September 8, 2017, via e-mail and first class mail to:

Robert J. Itri
Milligan Lawless, P.C.
5050 N. 40th Street, Suite 200
Phoenix, Arizona 85018
Tel: (602) 792-3532
Email: bob.itri@milliganlawless.com

Date: September 8, 2017

By: /s/ Byron E. Ma
Byron E. Ma

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically with the Trademark Trial and Appeal Board through its website located at <http://estta.uspto.gov/>

Date: September 8, 2017

/s/ Byron E. Ma
Byron E. Ma