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

Proceeding	91238672
Party	Defendant Super Bakery Inc.
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Submission	Answer
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Date	02/08/2018
Attachments	Pirateade_AnswerOpp.pdf(106413 bytes )

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

<b>PATRÓN SPIRITS INTERNATIONAL</b>	)	<b>Opposition No. 91238672</b>
<b>AG, a Swiss company,</b>	)	
	)	<b>Application No. 87/429,513</b>
<b>OPPOSER,</b>	)	
	)	<b>Mark: PIRATEADE</b>
<b>V.</b>	)	
	)	<b><i>ELECTRONICALLY FILED</i></b>
<b>SUPER BAKERY, INC.,</b>	)	
	)	
<b>APPLICANT.</b>	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION**

Super Bakery, Inc. (“Applicant”), by and through its attorneys, hereby responds to the individually numbered paragraphs of the Notice of Opposition filed by Patrón Spirits International AG, a Swiss company (“Opposer”) before the Trademark Trial and Appeal Board as follows:

1. Applicant is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Notice of Opposition and these allegations therefore are denied.

2. Applicant is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Notice of Opposition and these allegations therefore are denied. Further, Opposer’s allegations as to common law trademark rights and “developed reputation” state conclusions of law to which no responsive pleading is required. To the extent that a response is required, these allegations are denied as stated.

3. The allegations set forth in Paragraph 3 of the Notice of Opposition are denied to the extent they seek to interpret or summarize the referenced U.S. trademark registration for the word PYRAT RUM, which is in writing and speak for itself. The allegations of common law rights in the mark state a conclusion of law to which no responsive pleading is required. To the extent that a response is required, the allegations are denied.

4. The allegations set forth in Paragraph 4 of the Notice of Opposition are denied to the extent they seek to interpret or summarize the referenced U.S. trademark registration for the word PYRAT, which is in writing and speak for itself. The allegations of common law rights in the mark state a conclusion of law to which no responsive pleading is required. To the extent that a response is required, the allegations are denied.

5. The allegations set forth in Paragraph 5 of the Notice of Opposition provide a defined term to which no responsive pleading is required.

6. Admitted.

7. The allegations set forth in Paragraph 7 of the Notice of Opposition are denied.

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

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

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

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

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

**AFFIRMATIVE DEFENSES**

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

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

1. The goods identified with and listed under Opposer's identified U.S. Registrations for The PYRAT Marks (as defined in the Opposition) are unrelated to the goods identified with and listed under Applicant's Application for the PIRATEADE 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 PIRATEADE 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 PIRATEADE mark does not falsely suggest a connection with Opposer's cited marks. The public is not likely to associate 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 and will be no actual confusion between Applicant's PIRATEADE 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 and will not suffer any damage or injury as a result of Applicant's PIRATEADE mark and/or Applicant's use of this mark.

10. Opposer has permitted other parties to obtain trademark registrations on marks incorporating the words "PIRATE" or "PIRATES" or variations thereof in connection with drink and food products, services and goods, including, without limitation, PIRATE'S KEG at U.S. Registration No. 2103876 for "soft drinks, namely, root beer, cream soda and ice cream float flavored soda;" PIRATE'S DINNER ADVENTURE at U.S. Registration No. 2535935 for "Restaurant services, namely, providing food and drink;" PIRATES OF THE MISSISSIPPI at U.S. Registration No. 4686707 for "Alcoholic beverage produced from a brewed malt base with natural flavors; Alcoholic beverages, namely, ready to drink alcoholic beverages; pre-mixed alcoholic drinks; alcoholic carbonated drinks; alcoholic coolers; and prepared alcoholic cocktails; Distilled Spirits; Liquor; Liquor and liqueur beverages, namely, cordials; cream liqueurs; liqueurs; spirits and liqueurs; herb liqueurs; wines and liqueurs; Prepared cocktails consisting primarily of distilled spirits and also including beer; Rum; Spirits; all the foregoing

relating to pirate ships, pirate themes, and shipyards and not relating to sports or a sports team, league, mascot or stadium;” PIRATE ENERGY at U.S. Registration No. 4752310 for “Non-alcoholic beverages, namely, carbonated beverages; Cola drinks; Fruit drinks and fruit juices; Isotonic drinks; Soft drinks; all the foregoing not relating to sports or a sports team, league, mascot or stadium;” PIRATE ENERGY (and logo) at U.S. Registration No. 4946152 for “Non-alcoholic beverages, namely, carbonated beverages; Cola drinks; Fruit drinks and fruit juices; Isotonic drinks; Soft drinks; all the foregoing not relating to sports or a sports team, league, mascot or stadium;” PIRATE’S KEG at U.S. Registration No. 5386907 for “Energy drinks; Non-alcoholic beverages, namely, carbonated beverages; Soft drinks” and “Alcoholic beverages except beers; Rum; Rum; Spirits; Spirits and liqueurs; Vodka; Whiskey;” PIRAAT at U.S. Registration No. 1973750 for “beers and ales;” PIRATE JONNY’S at U.S. Registration No. 5099640 for “Food seasonings; spice rubs; sauces;” and PIRATE BRANDS at U.S. Registration No. 4758155 for “Snack foods, namely, vegetable based snack foods and potato based snack foods” and “Snack foods, consisting, namely, of corn-based snack foods, rice-based snack foods, and puffed corn-based snack foods.” In addition, Opposer has permitted other parties to use words “PIRATE” or “PIRATES” or variations thereof as a common law trademark in connection with drink and food products, services and goods, including, without limitation, PIRATE NOIR by Prairie Artisan Ales, PIRATE ALE by Small Town Brewery, PIRATE LIFE IPA AND PIRATE LIFE PALE ALE by Pirate Life, PIRATE LIFE BREWING, PIRATE STOUT by Santiam Brewing, PIRATE REPUBLIC BREWING COMPANY.

11. Similarly, Opposer has permitted numerous college, high school and little league sports teams to use “PIRATES” as a mascot name. Examples of such mascot name uses are set forth at: <https://www.mascotdb.com/teams/team-name/pirates>.

12. Because of such permitted trademark registrations, common law trademark uses and mascot names, Opposer has abandoned its identified marks in whole or at least in part in respect to the goods identified with Applicant's mark.

13. Alternatively, because of such permitted trademark registrations, common law trademark uses and mascot names, Opposer's marks are weak in respect to the goods identified with Applicant's mark.

14. Because of such permitted trademark registrations, common law trademark uses and mascot names, Opposer has waived its rights to oppose Applicant's 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: February 8, 2018

/s/ David G. Oberdick  
David G. Oberdick, Esquire  
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<b>SUPER BAKERY, INC.,</b>	)	
	)	
<b>APPLICANT.</b>	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION**, was filed electronically with the TTAB and mailed, via U.S. first class mail postage-paid, on the 8th day of February, 2018, to the following:

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