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

Proceeding	91239139
Party	Defendant 3 Square, Inc.
Correspondence Address	MARK ROBERTSON FUNSTEN & FRANZEN 9595 WILSHIRE BLVD STE 305 BEVERLY HILLS, CA 90212-2503 UNITED STATES Email: mrobertson@lawff.com
Submission	Answer
Filer's Name	Michael A. Grow
Filer's email	tmdocket@arentfox.com, michael.grow@arentfox.com, chiara.giuliani@arentfox.com, teresa.myers@arentfox.com
Signature	/Michael A. Grow/
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Attachments	San Pasqual v. 3 Square - Answer.pdf(363615 bytes)

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

SAN PASQUAL CASINO DEVELOPMENT :
GROUP, INC. :

Plaintiff :

v. : Opp. No. 91239139

3 SQUARE, INC., :

Defendant :

ANSWER

Applicant 3 Square, Inc. hereby provides the following response to the allegations contained in the numbered paragraphs of the notice of opposition filed in the above referenced proceeding.

1. Applicant denies the allegation contained in Paragraph 1 that Opposer will be damaged by Applicant's registrations. Applicant admits that it is a California corporation having an address of record of 7450 Beverly Boulevard, Los Angeles, California 90036 and that it owns Application Serial No. 85/588,233. Applicant is without sufficient knowledge to form a belief as to the remaining allegations contained in Paragraph No. 1 and, therefore, denies said allegations.

OPPOSER'S BLD MARKS

2. Applicant denies the allegations contained in Paragraph No. 2.
3. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 3 and, therefore, denies said allegations.
4. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 4 and, therefore, denies said allegations.
5. Applicant admits that Opposer obtained Cancelled Registration No. 3726776, which was cancelled due to Applicant's prior rights in the mark BLD.

6. Applicant denies the allegations in Paragraph No. 6.
7. Applicant denies the allegations in Paragraph No. 7.
8. Applicant admits that Opposer obtained Cancelled Registration No. 3736766,

which was cancelled due to Applicant's prior rights in the mark BLD.

9. Applicant denies the allegations in Paragraph No. 9.
10. Applicant denies the allegations in Paragraph No. 10.

APPLICANT'S BLD MARKS

11. Applicant admits the allegations contained in Paragraph No. 11, except that its first use of the mark BLD occurred at least as early as July 17, 2006.

12. Applicant denies the allegations contained in Paragraph No. 12.

13. Applicant admits the allegations contained in Paragraph No. 13, except that its use of the mark BLD was expanded at least as early as May 2014 to its restaurant at Los Angeles International Airport and except that Opposer has no constructive nationwide priority date and no valid first use date.

14. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 14 and, therefore, denies said allegations.

CANCELLATION NO. 92056703

15. Applicant admits that it filed its applications in April 2012 but otherwise denies the allegations contained in Paragraph No. 15.

16. Applicant admits that there is no geographical limitation in its applications and otherwise denies the allegations contained in Paragraph No. 16.

17. Applicant admits an office action was issued on or about July 19, 2012 citing Opposer's now cancelled registrations.

18. Applicant admits the allegations in Paragraph 18, except that Opposer filed its successful petition to cancel Opposer's BLD registrations on January 22, 2013, which led to the institution of Cancellation No. 92056703.

19. Applicant admits the allegations in Paragraph 19 except that Opposer also cited other grounds, including its prior common law rights in its BLD marks as a basis for its successful petition to cancel Opposer's BLD registrations.

20. Applicant admits the Board properly granted Applicant's petition to cancel Opposer's registrations based on Applicant's prior common law rights in Applicant's BLD marks. Applicant otherwise denies allegations in Paragraph 20.

OPPOSER'S CONCURRENT USE APPLICATIONS

21. Applicant admits the allegations contained in Paragraph No. 21.

22. Applicant admits the allegations contained in Paragraph No. 22.

23. Applicant admits the allegations contained in Paragraph No. 23.

24. Applicant denies the allegations in Paragraph No. 24.

25. Applicant admits it will obtain geographically unrestricted registrations but otherwise denies the allegations in Paragraph 25.

APPLICANT'S BAD FAITH CONDUCT PERTAINING TO BEVERLY BOULEVARD

26. Applicant admits that it closed its Beverly Boulevard restaurant but otherwise denies the allegations in Paragraph No. 26.

27. Applicant denies the allegations contained in Paragraph No. 27.

28. Applicant denies the allegations contained in Paragraph No. 28.

29. Applicant admits that Opposer filed a request for judicial notice but Applicant is without sufficient knowledge to form a belief as to the remaining allegations contained in Paragraph No. 29 and, therefore, denies said allegations.

30. Applicant admits that it did not file a written response to the request for judicial notice with the TTAB but Applicant otherwise denies the allegations contained in Paragraph No. 30.

31. Applicant admits the allegations contained in Paragraph No. 31.

32. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 32 and, therefore, denies said allegations.

33. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 33 and, therefore, denies said allegations.

APPLICANT'S BAD FAITH CONDUCT PERTAINING TO LAX

34. No citation to the record is provided and Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 34 and, therefore, denies said allegations.

35. No citation to record is provided and Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 35 and, therefore, denies said allegations

36. No specific citation to the record is provided and Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 36 and, therefore, denies said allegations.

37. No specific citation to the record is provided and Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 37 and, therefore, denies said allegations.

38. No specific citation to the record is provided and Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 38 and, therefore, denies said allegations.

39. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 39 and, therefore, denies said allegations.

40. Applicant denies the allegations contained in Paragraph No. 40.

41. Applicant denies the allegations contained in Paragraph No. 41.

42. Applicant denies the allegations contained in Paragraph No. 42.

43. Applicant denies the allegations contained in Paragraph No. 43.

44. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 44 and, therefore, denies said allegations.

45. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 45 and, therefore, denies said allegations.

46. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 46 and, therefore, denies said allegations.

APPLICANT'S INTENT NOT TO RESUME USE OF BLD

47. Applicant denies the allegations contained in Paragraph No. 47.

48. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 48 and, therefore, denies said allegations

49. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 49 and, therefore, denies said allegations.

50. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 50 and, therefore, denies said allegations.

51. Applicant denies the allegations contained in Paragraph No. 51.

52. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 52 and, therefore, denies said allegations.

53. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 53 and, therefore, denies said allegations.

54. Applicant admits that 7450 Beverly Boulevard is located in one of the most popular tourist areas in the country but otherwise denies the allegations contained in Paragraph No. 54.

55. Applicant admits the allegations contained in Paragraph No. 55.

56. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 56 and, therefore, denies said allegations.

57. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 57 and, therefore, denies said allegations.

58. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 58 and, therefore, denies said allegations.

59. Applicant denies the allegations contained in Paragraph No. 59.

GROUND #1: PRIORITY & LIKELIHOOD OF CONFUSION, § 2(d)

60. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 60 and, therefore, denies said allegations.

61. Applicant denies the allegations contained in Paragraph No. 61.

62. Applicant denies the allegations contained in Paragraph No. 62.

63. Applicant denies the allegations contained in Paragraph No. 63.

64. Applicant denies the allegations contained in Paragraph No. 64.

65. Applicant denies the allegations contained in Paragraph No. 65.

66. Applicant denies the allegations contained in Paragraph No. 66.

67. Applicant admits the allegations contained in Paragraph No. 67.

68. Applicant denies the allegations contained in Paragraph No. 68.

69. Applicant admits that Opposer's marks are likely to cause confusion, mistake or deception with Applicant's prior BLD marks but otherwise denies the allegations contained in Paragraph No. 69.

70. Applicant admits the allegations contained in Paragraph No. 70.

71. Applicant denies the allegations contained in Paragraph No. 71.

GROUND #2: ABANDONMENT

72. Applicant denies the allegations contained in Paragraph No. 72.

73. Applicant denies the allegations contained in Paragraph No. 73.

74. Applicant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph No. 74.

75. Applicant denies the allegations contained in Paragraph No. 75.

76. Applicant denies the allegations contained in Paragraph No. 76.

77. Applicant denies the allegations contained in Paragraph No. 77.

GROUND #3: FAILURE TO COMPLY WITH § 1(a)

78. Applicant admits to filing its applications under § 1(a) of the Lanham Act, 15 U.S.C. § 1051(a) but otherwise denies the allegations contained in Paragraph No. 78.

79. Applicant denies the allegations contained in Paragraph No. 79.

80. Applicant denies that it has discontinued use of its BLD marks and admits that it has not falsely represented to the Patent and Trademark Office that it has discontinued such use as alleged in Paragraph No. 80.

81. Applicant denies the allegations contained in Paragraph No. 81.

82. Applicant denies that it has not notified the Patent and Trademark Office of Opposer's alleged use as claimed in Paragraph No. 82. Applicant otherwise denies the allegations in this paragraph.

83. Applicant denies the allegations contained in Paragraph No. 83.

84. Applicant denies the allegations contained in Paragraph No. 84.

85. Applicant denies the allegations contained in Paragraph No. 85.

86. Applicant denies the allegations contained in Paragraph No. 86.

GROUND #4: FRAUD

87. Applicant admits the allegations contained in Paragraph No. 87, except that Applicant also cited other grounds in its successful cancellation petition.

88. Applicant admits the allegations contained in Paragraph No. 88, except that Applicant also cited other grounds in its successful cancellation petition.

89. Applicant denies the allegations contained in Paragraph No. 89.

90. Applicant denies the allegations contained in Paragraph No. 90.

91. Applicant denies the allegations contained in Paragraph No. 91.

92. Applicant admits the allegations contained in Paragraph No. 92.

93. Applicant denies the allegations contained in Paragraph No. 93.

94. Applicant denies the allegations contained in Paragraph No. 94.
95. Applicant denies the allegations contained in Paragraph No. 95.
96. Applicant denies the allegations contained in Paragraph No. 96.
97. Applicant denies the allegations contained in Paragraph No. 97.
98. Applicant denies the allegations contained in Paragraph No. 98.
99. Applicant denies the allegations contained in Paragraph No. 99.
100. Applicant denies the allegations contained in Paragraph No. 100.

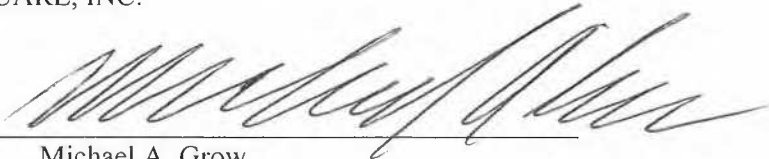
AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim on which relief may be granted.
2. Opposer's claims are barred by the doctrines of res judicata.
3. Opposer's claims are barred in whole or in part by the doctrine of collateral estoppel.
4. Opposer's claims are barred in whole or in part by the doctrine of judicial estoppel.

WHEREFORE, Applicant respectfully submits that the opposition should be dismissed with prejudice.

3 SQUARE, INC.

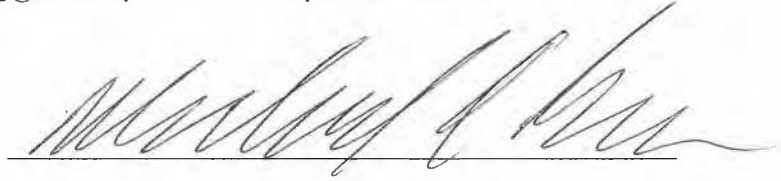
By: _____


Michael A. Grow
Chiara Giuliani
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
(202) 857 6389

Attorneys for Defendant

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing ANSWER (re Opp. No. 91239139) is being served upon Plaintiff's counsel Hillary A Brooks of Brooks Quinn LLC at hillary@brooksquinn.com and docketing@brooksquinn.com on April 6, 2018.



A handwritten signature in cursive script, appearing to read "Hillary A Brooks", is written over a horizontal line.