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Filing date: **08/06/2018**

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

| | |
|------------------------|--|
| Proceeding | 91242113 |
| Party | Defendant Firebird IP, LLC |
| Correspondence Address | JOHN J. ARNOTT MUNCK WILSON MANDALA LLP 12770 COIT ROAD, SUITE 600 DALLAS, TX 75251 Email: trademarks@munckwilson.com, trademarks@dalpat.com |
| Submission | Answer |
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| Signature | /PQH-aeh/ |
| Date | 08/06/2018 |
| Attachments | Answer to Notice of Opposition.pdf(111025 bytes) |

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

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|--|---|-------------------------|
| In the Matter of Application Serial No. |) | |
| 87/599,797 |) | |
| For the Trademark DON'T MESS WITH |) | |
| TEX MEX |) | |
| Published in the Official Gazette on March |) | |
| 13, 2018 |) | |
| |) | |
| |) | |
| Texas Department of Transportation, |) | Opposition No. 91242113 |
| Opposer, |) | |
| |) | |
| v. |) | |
| |) | |
| Firebird IP, LLC, |) | |
| Applicant. |) | |
| |) | |
| _____ |) | |

ANSWER TO NOTICE OF OPPOSITION

Firebird IP, LLC (“Applicant”), by and through its attorneys, Munck Wilson Mandala, LLP, hereby answers the Notice of Opposition against Application Serial No. 87/599,797 filed by Texas Department of Transportation (“Opposer”) as follows:

1. Applicant admits the allegations in Paragraph 1.
2. Applicant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 and therefore denies those allegations.
3. Paragraph 3 refers to records of the United States Patent and Trademark Office (“PTO”). Such records speak for themselves and Applicant therefore denies the allegations in Paragraph 3 to the extent they conflict with such records.
4. Paragraph 4 refers to records of the PTO. Such records speak for themselves and Applicant therefore denies the allegations in Paragraph 4 to the extent they conflict with such records.

5. Paragraph 5 is a legal conclusion to which no response is required. To the extent a response is required; Applicant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 and therefore denies those allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 and therefore denies those allegations.

7. Applicant denies the allegations in Paragraph 7.

8. Applicant denies the allegations in Paragraph 8.

9. Paragraph 9 is a legal conclusion to which no response is required. To the extent a response is required; Applicant is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 9 and therefore denies those allegations.

10. Applicant is not required to answer the allegations in the Paragraph 10 of the Notice of Opposition, which merely describe the relief requested.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Claim)

1. The Notice of Opposition fails to set forth facts sufficient to entitle the Opposer to the relief sought, and therefore the Notice of Opposition should be dismissed.

Second Affirmative Defense

(Fair Use)

2. The claims made in the Notice of Opposition are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

Third Affirmative Defense

(First Amendment)

3. The claims made in the Notice of Opposition are barred, in whole or in part, by the First Amendment to the Constitution of the United States.

Fourth Affirmative Defense

(Restriction in the Alternative)

4. In the event that a determination is made that Applicant is not entitled to registration of the all the identified goods and services, Applicant is at least entitled to a registration restricted to only the identified goods and services in International Class 43, namely restaurant and bar services. Accordingly, in the event that a determination is made that Applicant is not entitled to registration of all the identified goods and services, Applicant shall move for the registration to be restricted to only the identified goods and services in International Class 43, namely restaurant and bar services. Such a restriction will avoid a likelihood of confusion because Opposer is not using Opposer's Mark on the identified goods and services in International Class 43 to be retained in the registration.

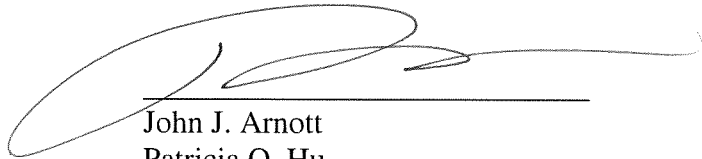
Additional Affirmative Defenses

5. Applicant reserves the right to assert additional defenses based on information learned or obtained during discovery.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed and that a Notice of Allowance issue on Application No. 87/599,797.

Dated: August 6, 2018

Respectfully submitted,

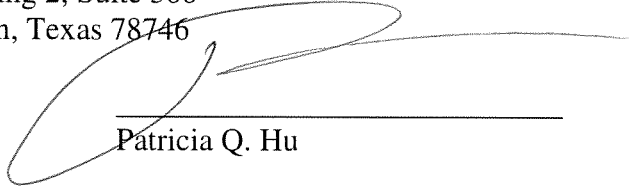


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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing document was served on the following counsel of record via electronic mail, in accordance with the Federal Rules of Civil Procedure, on this 6th day of August, 2018.

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