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

Proceeding	91242537
Party	Defendant B&M Craft Spirits, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**JOHN WAYNE ENTERPRISES, LLC,**

**Opposer,**

**E-FILING**

vs.

Opposition No. 91242537

**B&M CRAFT SPIRITS, LLC,**

**Applicant.**

Ser. No. 87/700,271 & 87/706,651  
Mark: DUKE & DAME  
DD DUKE & DAME (and design)

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**ANSWER AND AFFIRMATIVE DEFENSES**

Applicant, B&M Craft Spirits, LLC, by and through its undersigned attorneys, files this Answer and Affirmative Defenses to the Notice of Opposition filed by Opposer, John Wayne Enterprises, LLC (“Opposer”), and states as follows:

**ANSWER**

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegations contained in Paragraph 1.
2. Applicant states that the referenced trademark registrations and applications speak for themselves but is otherwise without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegations contained in Paragraph 2.

3. Applicant states that the referenced registrations speak for themselves but is otherwise without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegations contained in Paragraph 3.

4. Applicant denies the allegations contained in Paragraph 4.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegations contained in Paragraph 5.

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

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of, and therefore denies, the allegations contained in Paragraph 7.

8. Applicant denies the allegations contained in Paragraph 8.

9. Applicant states that its trademark application speaks for itself but admits that the relevant application was filed on November 28, 2017 under Section 1(b) intent to use; Applicant denies any remaining allegations contained in Paragraph 9.

10. Applicant admits the allegations contained in Paragraph 10.

11. Applicant states that its trademark application speaks for itself but admits that the relevant application was filed on December 4, 2017 under Section 1(b) intent to use; Applicant denies any remaining allegations contained in Paragraph 11.

12. Applicant admits the allegations contained in Paragraph 12.

### **FIRST CLAIM FOR RELIEF**

13. Applicant hereby incorporates its foregoing responses to the paragraphs as fully set forth herein.

14. Applicant states that Section 2(d) of the Lanham Act speaks for itself and otherwise denies the allegations contained in Paragraph 14, including that Opposer has plead any sufficient cause of action under the Lanham Act.

15. Applicant denies the allegations contained in Paragraph 15.

16. Applicant denies the allegations contained in Paragraph 16.

### **SECOND CLAIM FOR RELIEF**

17. Applicant hereby incorporates its foregoing responses to the paragraphs as fully set forth herein.

18. Applicant states that Section 2(a) of the Lanham Act speaks for itself and otherwise denies the allegations contained in Paragraph 18, including that Opposer has plead any sufficient cause of action under the Lanham Act.

19. Applicant denies the allegations contained in Paragraph 19.

20. Applicant denies the allegations contained in Paragraph 20.

21. Applicant denies the allegations contained in Paragraph 21.

22. Applicant admits the allegations contained in Paragraph 22.

23. Applicant denies the allegations contained in Paragraph 23.

24. Applicant denies the allegations contained in Paragraph 24.

### **THIRD CLAIM FOR RELIEF**

25. Applicant hereby incorporates its foregoing responses to the paragraphs as fully set forth herein.

26. Applicant denies the allegations contained in Paragraph 26.

27. Applicant denies the allegations contained in Paragraph 27.

28. Applicant denies the allegations contained in Paragraph 28.

29. Applicant denies the allegations contained in Paragraph 29.

**First Affirmative Defense**

Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

**Second Affirmative Defense**

There is no likelihood of confusion between Applicant's DUKE & DAME or DD DUKE & DAME INSPIRED CRAFT SPIRITS (and design) marks and Opposer's asserted marks listed in the Notice of Opposition.

**Third Affirmative Defense**

The term DUKE is so commonly used by third parties, including for alcohol, restaurants and bars, that any rights Opposer has in its marks are very weak and do not extend to Applicant and its marks.

**Fourth Affirmative Defense**

Applicant reserves the right to raise additional affirmative defenses as discovered through the course of discovery.

WHEREFORE, Applicant prays that the Notice of Opposition be found to be without merit and resolved in Applicant's favor.

Respectfully Submitted,

/s/ Mindi M. Richter  
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Attorney for Applicant

**PROOF OF SERVICE**

The undersigned hereby certifies that the foregoing Answer and Affirmative Defenses has been served upon Attorneys for Opposer, Ronald P. Oines and Lindsay J. Hulley at Rutan & Tucker, LLP, 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626 as follows:

- by delivering a copy of the paper to the person served;
- by leaving a copy at the usual place of business of the person served, with someone in the person's employment;
- by leaving a copy at the residence of the person served, with a member of the person's family over the age of fourteen years and of discretion, since the person is not believed to have a usual place of business;
- by transmitting a copy to the person served by the "Express Mail Post Office to Addressee" service of the United States Postal Service;
- by transmitting a copy to the person served by first class mail;
- by transmitting a copy by overnight courier;
- by transmitting a copy by email.

on August 29, 2018.

/s/ Mindi M. Richter \_\_\_\_\_  
Mindi M. Richter, Esquire