

ESTTA Tracking number: **ESTTA1006478**

Filing date: **10/03/2019**

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

Proceeding	91249789
Party	Defendant Cacique, Inc.
Correspondence Address	ANTONIO DE CARDENAS DE CARDENAS LAW GROUP, APLC 201 S. LAKE AVENUE, SUITE 413 PASADENA, CA 91101 jchang@decarlaw.com, adc@decarlaw.com, rsilva@decarlaw.com no phone number provided
Submission	Answer
Filer's Name	Antonio de Cardenas
Filer's email	adc@decarlaw.com, jchang@decarlaw.com, rsilva@decarlaw.com
Signature	/antonio de cardenas/
Date	10/03/2019
Attachments	Signed Final Querizo Answer 10032019.pdf(151805 bytes)

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

In the Matter of Trademark Application Serial No. 88/158,480
Mark: QUERIZO
Published in the *Official Gazette* January 29, 2019

RIZO-LOPEZ FOODS, INC.,

Opposer.

v.

CACIQUE, INC.,

Applicant.

Opposition No. 91,249,789

ANSWER, AFFIRMATIVE DEFENSES

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES

TO OPPOSER'S NOTICE OF OPPOSITION

Applicant, Cacique, Inc. ("Applicant"), for its answer to the Notice of Opposition (the "Opposition") filed by Rizo-Lopez Foods, Inc. ("Rizo-Lopez") Applicant's Application Serial No. 88/158,480 for the mark, QUERIZO (the "Mark"), pleads and avers as follows:

1. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the averments in ¶1 of the Opposition, and therefore denies the same.
2. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other averments in ¶2 of the Opposition, and therefore denies the same.
3. Applicant admits that Opposer's Registration No. 5,352,254 is still in force today. However, lacks knowledge and information sufficient to form a belief as to the truth of the other averments in ¶3 of the Opposition, and therefore denies the same.
4. No answer required.
5. Admit.
6. Applicant denies the first and second sentences of numbered ¶6 of the Opposition and

states that Applicant's mark speaks for itself. Applicant admits the third and fourth sentences of numbered ¶6 of the Opposition.

7. Applicant admits that it intends to use the Mark in connection with the goods described in its Application. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other averments in ¶7 of the Opposition, and therefore denies the same.

8. Deny the averments in ¶8 of the Opposition.

9. Deny the averments in ¶9 of the Opposition.

10. No answer required.

11. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other averments in ¶11 of the Opposition, and therefore denies the same.

12. Deny the averments in ¶12 of the Opposition.

13. No answer required.

14. Deny the averments in ¶14 of the Opposition.

15. Deny the averments in ¶15 of the Opposition.

16. Deny the averments in ¶16 of the Opposition.

17. No answer required.

AFFIRMATIVE DEFENSES

First Affirmative Defense (Supplemental Register – No Acquired Distinctiveness)

18. Opposer's RIZO BROS mark, Reg. No. 5,352,254, is registered on the Supplemental Register. Therefore, Opposer's RIZO BROS mark cannot serve as a basis for this Opposition without a prima facie showing of secondary meaning through acquired distinctiveness. Upon information and belief, such prima facie showing cannot be made because Opposer has not used the RIZO BROS mark in commerce for at least five (5) years.

Second Affirmative Defense (Failure to Submit Acceptable Specimen and Response to Post Registration Office Action)

19. Upon information and belief, on January 30, 2014, Opposer filed a Post-Registration Office Action Response to its Combined Declaration of Use for Renewal of Registration under Sections 8 & 9 for its RIZO-LOPEZ mark (Reg. No. 2,695,304). Upon information and belief, such response did not adequately address the Examiner's requirements in the Post Registration Office Action. Specifically, the Examiner required from Opposer: (i) a substitute specimen showing current use of the registered mark in commerce for each class of goods specified in the registration; and (ii) an affidavit or signed declaration under 37 C.F.R. §2.20 stating that, "The substitute specimen was in use in commerce during the relevant period for filing the 6-year Section 8."

20. Upon information and belief, Opposer did not satisfy either of the Post-Registration Office Action requirements. Accordingly, Opposer's registration was renewed by inadvertence or mistake and should be cancelled. As such, Opposer lacks standing to assert this registration against Applicant.

**Third Affirmative Defense
(Merely a Surname)**

21. Upon information and belief, Opposer's marks, RIZO-LOPEZ and RIZO BROS, are based upon the surnames of Opposer's owners (Rizo and Lopez). As surnames, the marks are not inherently distinctive and should be accorded a lower level of protection under the law.

**Fourth Affirmative Defense
(Confusing Similarity)**

22. The parties' marks are not confusingly similar. Opposer's marks each consist of two separate terms *beginning* with the surname, "RIZO" (i.e., RIZO-LOPEZ and RIZO BROS). In contrast, Applicant's Mark consists of a single term *ending* with the letters "rizo" (i.e., QUERIZO). Not only are the parties' marks completely dissimilar in appearance and commercial impression, but the marks do not sound the same or have the same meaning or connotation. Accordingly, the marks are not confusingly similar under the Lanham Act.

Additional Defenses

23. Applicant reserves the right to add additional defenses that may become apparent during the

pendency of this Opposition.

WHEREFORE, Applicant prays as follows:

- (a) The Opposition be dismissed with prejudice; and
- (b) Applicant's Mark be approved for registration.

Dated: October 3, 2019

Respectfully Submitted,

CACIQUE, INC.

By: 
Antonio de Cardenas, Esq.
Ju J. Chang, Esq.
DE CARDENAS LAW GROUP, APLC
625 Fair Oaks Ave., Ste 383
South Pasadena, CA 91030
(626) 577-6800
adc@decarlaw.com
jchang@decarlaw.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of October 2019, a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served upon Opposer's counsel in the following manner:

VIA EMAIL AND FIRST-CLASS MAIL

Rob G. Leach, Esq.
Charmasson, Buchaca & Leach, LLP
2635 Camino Del Rio S
Suite 102
San Diego, CA 92108
rob@charmason.com

By: 
Rebecca Silva

CERTIFICATE OF ELECTRONIC FILING

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 3rd day of October 2019.

By:

Handwritten signature of Ju J. Chang in blue ink, written over a horizontal line.

Ju J. Chang, Esq.
DE CARDENAS LAW GROUP, APLC
625 Fair Oaks Ave., Ste 383
South Pasadena, CA 91030
(626) 577-6800
jchang@decarlaw.com
Attorney for Applicant