

ESTTA Tracking number: **ESTTA1014320**

Filing date: **11/07/2019**

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

Proceeding	91250590
Party	Defendant Three Square Market, Inc.
Correspondence Address	CAROL N SKINNER SKINNER & ASSOCIATES 212 COMMERCIAL STREET HUDSON, WI 54016 UNITED STATES info@skinnerlaw.com, scherry@skinnerlaw.com no phone number provided
Submission	Answer
Filer's Name	Carol N. Skinner
Filer's email	info@skinnerlaw.com, cskinner@skinnerlaw.com, lfederowicz@skinnerlaw.com
Signature	/Carol N. Skinner/
Date	11/07/2019
Attachments	Applicant Answer to Opposition.pdf(927182 bytes)

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

In the Matter of Application Serial No. 88/113,803
For the Mark: THREE SQUARE MARKET and Design
Filed: September 12, 2018
Published: March 5, 2019

SQUARE, INC.

Opposer,

Opposition No.: 91250590

v.

THREE SQUARE MARKET, INC.
Applicant.

APPLICANT'S ANSWER TO OPPOSITION

The Applicant, Three Square Market, Inc., by its attorneys Skinner and Associates by Carol N. Skinner, answers the Opposition of Square, Inc., as follows:

1. Admits the allegations contained in paragraph 1.
2. Admits the allegations contained in paragraph 2.
3. Lacks information sufficient to form a belief as to the accuracy of the allegation by Opposer's claim of "market leader," and puts Opposer to its proof thereon. Admits the remaining allegations in paragraph 3.
4. Admits the allegations contained in paragraph 4.
5. Lacks information sufficient to form a belief as to the accuracy of the allegations contained in paragraph 5 and puts Opposer to its proof thereon.

6. Admits the allegations contained in paragraph 6 as to Opposer's registered marks.
Denies the remaining allegations as they pertain to Opposer's expanded definition of "the SQUARE marks."
7. Lacks information sufficient to form a belief as to the accuracy of the allegations contained in paragraph 7 and puts Opposer to its proof thereon.
8. Admits that Applicant and Opposer have not discussed Applicant's use of any mark containing the word "square." Denies the inference that Opposer's permission to do so would be required.
9. Admits the allegations contained in paragraph 9.
10. Admits the allegations contained in paragraph 10.
11. Admits the allegations contained in paragraph 11.
12. Admits the allegations contained in paragraph 12.
13. Admits the allegations contained in paragraph 13.
14. Denies the allegations contained in paragraph 14, inasmuch as they suggest that priority is based on application date, rather than date of first use. Applicant began using THREE SQUARE MARKET at least as early as January 31, 2013. Opposer's earliest use of the mark SQUARE in Class 42 is listed as February 2, 2012, which is not "well prior" to Applicant's use.
15. Applicant realleges and incorporates herein the preceding responses to the allegations of this Opposition.
16. Denies the allegations contained in paragraph 16, and puts Opposer to its proof thereon.
17. Denies the allegations contained in paragraph 17, and puts Opposer to its proof thereon.
18. Denies the allegations contained in paragraph 18, and puts Opposer to its proof thereon.

19. Denies the allegations contained in paragraph 19, and puts Opposer to its proof thereon.
20. Given the fact that both Opposer's and Applicant's consumers constitute the public at large, admit the allegations of paragraph 20.
21. Denies the allegations contained in paragraph 21, and puts Opposer to its proof thereon.
22. Denies the allegations contained in paragraph 22, and puts Opposer to its proof thereon.
23. Denies the allegations contained in paragraph 23, and puts Opposer to its proof thereon.
24. Denies the allegations contained in paragraph 24, and puts Opposer to its proof thereon.
25. Denies the allegations contained in paragraph 25, and puts Opposer to its proof thereon.
26. Applicant realleges and incorporates herein the preceding responses to the allegations of this Opposition.
27. Denies the allegations contained in paragraph 27, and puts Opposer to its proof thereon.
28. Denies the allegations contained in paragraph 28, and puts Opposer to its proof thereon.
29. Denies the allegations contained in paragraph 29, and puts Opposer to its proof thereon.
30. Applicant realleges and incorporates herein the preceding responses to the allegations of this Opposition.
31. Denies the allegations contained in paragraph 31, and puts Opposer to its proof thereon.
32. Denies the allegations contained in paragraph 32, and puts Opposer to its proof thereon.

AFFIRMATIVE DEFENSES

Pleading further, Applicant sets forth the following affirmative and other defenses:

1. Applicant avers that Opposer's claims are barred, in whole or in part, by the doctrines of laches, acquiescence, waiver, estoppel, mistake, and/or unclean hands.
2. Applicant avers that the parties have used their respective marks which are the subject matter of this Proceeding concurrently for more than six years without evidence of actual

confusion, such that Opposer's claims of likelihood of confusion, likelihood of dilution, and false association are without merit.

3. Applicant avers that Opposer's claims are barred, in whole or in part, to the extent that Opposer failed to act reasonably and diligently to mitigate any damages it allegedly suffered.

WHEREFORE, Applicant prays that the Opposer Square Inc's Opposition be dismissed with prejudice, and the Application Serial No. 88/113,803 be allowed.

Respectfully submitted this 7th day of November, 2019.

SKINNER AND ASSOCIATES



Carol N. Skinner
Attorneys for Three Square Market, Inc.
Attorney ID # 1017307
212 Commercial
Hudson, WI 54016
(715) 386-5800
cskinner@skinnerlaw.com