

ESTTA Tracking number: **ESTTA1009431**

Filing date: **10/17/2019**

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

Proceeding	91250748
Party	Defendant Aspen Beverage Investments, LLC
Correspondence Address	ASPEN BEVERAGE INVESTMENTS LLC 8790 EAST VIA DE VENTURA #4456 SCOTTSDALE, AZ 85261 UNITED STATES jriver@a1brewery.com no phone number provided
Submission	Answer
Filer's Name	Kevin Keener
Filer's email	kevin.keener@keenerlegal.com
Signature	/kevinkeener/
Date	10/17/2019
Attachments	Answer to Notice of Opposition Nimbus.pdf(140106 bytes)

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

In the matter of:
Application Serial Nos. 88/975,199 & 88/107,024
Application Filing Date: September 6, 2018
Mark: NIMBUS BREWING COMPANY

)	
)	
TWO BROTHERS BREWING)	
COMPANY)	
)	
Opposer,)	Opposition No. 91250748
)	
v.)	
)	
ASPEN BEVERAGE INVESTMENTS,)	
LLC)	
)	
Applicant.)	
)	
)	

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

The following is the Answer of ASPEN BEVERAGE INVESTMENTS, LLC (hereinafter “Applicant”) to the Notice of Opposition filed by TWO BROTHERS BREWING COMPANY (hereinafter “Opposer”) on August 29, 2019 and assigned Opposition No. 91250748 (hereinafter “Notice of Opposition”). Applicant hereby Answers solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

TWO BROTHERS AND ITS MARKS

1. Applicant is without knowledge as to the allegations in paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge as to the allegations in paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge as to the allegations in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Applicant admits that Application Serial No. 88/460,533 is for the mark NIMBUS for “beer.” Applicant admits that Application Serial No. 88/460,533 was filed on June 5, 2019. Applicant is without knowledge as to the remaining allegations in paragraph 4 of the Notice of Opposition and therefore denies the same.

ASPEN BEVERAGE AND ITS MARK

5. Applicant admits that it filed Application Serial No. 88/107,024 for the mark NIMBUS BREWING COMPANY for “T-shirts” in Class 25 and Application Serial No. 88/975,199 for the mark NIMBUS BREWING COMPANY for “Beverage glassware” in Class 31 and “Beer” in Class 32. Applicant is without knowledge as to the remaining allegations in paragraph 5 of the Notice of Opposition and therefore denies the same.
6. Applicant denies the allegations of paragraph 6 of the Notice of Opposition.
7. Applicant is without knowledge as to the allegations in paragraph 7 of the Notice of Opposition and therefore denies the same.

COUNT I:
PRIORITY AND LIKELIHOOD OF CONFUSION

8. Applicant repeats and realleges each and every answer contained in the foregoing paragraphs as if fully recited herein.
9. Applicant is without knowledge as to the allegations in paragraph 9 of the Notice of Opposition and therefore denies the same.
10. Applicant denies the allegations of paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations of paragraph 11 of the Notice of Opposition.

12. Applicant is without knowledge as to the allegations in paragraph 12 of the Notice of Opposition and therefore denies the same.

COUNT II:
NO USE IN COMMERCE BEFORE APPLICATION WAS FILED

13. Applicant repeats and realleges each and every answer contained in the foregoing paragraphs as if fully recited herein.

14. Applicant admits the allegations in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations of paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations of paragraph 16 of the Notice of Opposition.

COUNT III:
NOT RIGHTFUL OWNER OF THE MARK

17. Applicant repeats and realleges each and every answer contained in the foregoing paragraphs as if fully recited herein.

18. Applicant denies the allegations of paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations of paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations of paragraph 20 of the Notice of Opposition.

COUNT IV:
FRAUD ON THE USPTO

21. Applicant repeats and realleges each and every answer contained in the foregoing paragraphs as if fully recited herein.

22. Applicant denies the allegations of paragraph 22 of the Notice of Opposition.

23. Applicant denies the allegations of paragraph 23 of the Notice of Opposition.

24. Applicant denies the allegations of paragraph 24 of the Notice of Opposition.

25. Applicant denies the allegations of paragraph 25 of the Notice of Opposition.

26. Applicant denies the allegations of paragraph 26 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposer fails to state a claim upon which relief can be granted.
2. Opposer fails to state a claim upon which relief can be granted because Opposer lacks standing.
3. There is no likelihood of confusion between Opposer's mark and Applicant's marks.
4. Upon information and belief, Opposer is barred by laches as it has failed to enforce its alleged rights against similar parties with identical or substantially similar marks.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Date: October 17, 2019

Respectfully submitted,

/KevinKeener/
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Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Applicant's Answer to Notice of Opposition was served upon Opposer by electronic mail, on this 17th day of October 2019, at the following email address:

Thomas L. Holt
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/KevinKeener/
Kevin Keener