ESTTA Tracking number: **ESTTA1072114**

Filing date: **07/31/2020**

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

Proceeding	91256351
Party	Defendant Tapia Brothers, Inc
Correspondence Address	ELIZABETH YANG LAW & MEDIATION OFFICES OF ELIZABETH YAN 199 W. GARVEY AVE 199 W. GARVEY AVE, SUITE 201 MONTEREY, CA 91767 UNITED STATES Primary Email: elizabeth@yanglawoffices.com Secondary Email(s): gloria@yanglawoffices.com No phone number provided.
Submission	Answer
Filer's Name	Elizabeth Yang
Filer's email	elizabeth@yanglawoffices.com, rhoneil@yanglawoffices.com, glor-ia@yanglawoffices.com
Signature	/Elizabeth Yang/
Date	07/31/2020
Attachments	2020_07_31 Answer to La Estrella351draftRP.pdf(151743 bytes)

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

GILDA INDUSTRIES, INC., Opposer, v. TAPIA BROTHERS, INC., Applicant.	Opposition No. 91256351 Application Serial No. 88/540,280 Mark: "COCINA ESTRELLA & Design"

ANSWER TO NOTICE OF OPPOSITION

Applicant, TAPIA BROTHERS, INC., a California corporation, (hereinafter "Applicant") hereby responds to Opposer GILDA INDUSTRIES, INC., a Florida corporation, (hereinafter "Opposer")'s Notice of Opposition to Application Serial No. 88/540,280 as follows:

LIKELIHOOD OF CONFUSION

1. Applicant asserts that no response is necessary to paragraph 1, but to the extent a response is necessary, Applicant admits that the application is Applicant's serial number is 88/540,280 filed on July 30, 2019 on an intent to use basis.
2. It is admitted as to the allegations regarding Opposer's trademark registration 1,268,119 (hereinafter "the 119 Registration"). Applicant lacks knowledge or information sufficient to form a belief as to admitting or denying the remaining allegation in paragraph 2.
3. Applicant lacks sufficient knowledge or information to either admit or deny the allegation.
4. Applicant lacks sufficient knowledge or information to either admit or deny the allegation.
5. Applicant lacks sufficient knowledge or information to either admit or deny the allegation of whether Opposer's Mark has grown. The remainder of paragraph 5 sets forth legal conclusions and questions of law to which no response is required, but to the extent a response is necessary, Applicant denies the allegations and/or legal conclusions contained in Paragraph 5.

6. Paragraph 6 sets forth legal conclusions and questions of law to which no response is required, but to the extent a response is necessary, Applicant denies the allegations and/or legal conclusions contained in Paragraph 6.
7. Paragraph 7 sets forth legal conclusions and questions of law to which no response is required, but to the extent a response is necessary, Applicant denies the allegations and/or legal conclusions contained in Paragraph 7.
8. Applicant lacks sufficient knowledge or information to either admit or deny the allegation.
9. Paragraph 9 sets forth legal conclusions and questions of law to which no response is required, but to the extent a response is necessary, Applicant denies the allegations and/or legal conclusions contained in Paragraph 9.
10. Paragraph 10 sets forth legal conclusions and questions of law to which no response is required, but to the extent a response is necessary, Applicant denies the allegations and/or legal conclusions contained in Paragraph 10.

AFFIRMATIVE DEFENSES

Applicant asserts that the following affirmative defenses bar Opposer's requested relief in its Notice of Opposition.

First Affirmative Defense

One or more of Opposer's claims fail to state a claim upon which relief may be granted.

Second Affirmative Defense

There is no likelihood of confusion under 15 U.S.C. § 1052(d). The question of whether a mark sought to be registered is likely to cause actual confusion can only be resolved on a case by case basis, and the quantum of evidence which was persuasive in finding likelihood of confusion. See *Resorts of Pinehurst, Inc. v. Pinehurst National Corp*., 148 F.3d 417 (4th Cir. 1998); *Sun Banks of Fla., Inc. v. Sun Fed. Savs. & Loan Ass'n*, 651 F.2d 311, 319 (5th Cir. 1981). The test for determining whether a mark is deceptively similar or not should be decided on the basis of the test of entirety of the mark by the purchasing public. There is a settled proposition of law that marks are always to be compared as a whole in a "likelihood of confusion" analysis and it is not

correct to take a part of the mark and compare it is the part or whole of the other trademark [See. *F.Hoffman La Roche & Co. Pvt. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.* (AIR 1970 SC 2062). There is no likelihood of confusion, mistake, or deception because, inter alia, Applicant's Mark and the alleged trademark of the Opposer are not confusingly similar.

Third Affirmative Defense

Opposer's rights in and to the portion of its alleged trademark are generic or, in the alternative, merely descriptive of the goods or services offered under the marks. Opposer's alleged marks are therefore inherently unprotectable absent acquired distinctiveness.

Fourth Affirmative Defense

One or more of Opposer's claims are barred by the equitable defenses of laches, acquiescence, waiver, and/or estoppel.

Fifth Affirmative Defense

One or more of Opposer's claims are barred because there is no actual evidence of confusion. Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board: dismiss the Notice of Opposition with prejudice; and all other appropriate reliefs to Applicant as the Board deems just.

Dated: July 31, 2020

Respectfully submitted by,
_____/Elizabeth Yang/_____
Elizabeth Yang
Law & Mediation Offices of Elizabeth Yang
199 W. Garvey Ave., Suite 201,
Monterey Park, CA 91754
(TEL): 909-996-5906, 877-492-6452
Attorneys for Applicant
Tapia Brothers, Inc.