

ESTTA Tracking number: **ESTTA1092294**

Filing date: **10/30/2020**

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

Proceeding	91264906
Party	Defendant Illegal Pete's, LLC
Correspondence Address	JOHN C. HEUTON 14166 WHITNEY CIRCLE BROOMFIELD, CO 80023 UNITED STATES Primary Email: johnheuton@gmail.com 603-219-4042
Submission	Answer
Filer's Name	John C. Heuton
Filer's email	john@heutonip.com
Signature	/John C. Heuton/
Date	10/30/2020
Attachments	2020.10.30_Answer_and_Affirmative_Defenses.pdf(145558 bytes)

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

Taco Bell IP Holder, LLC,

Opposer,

v.

Illegal Pete's, LLC,

Applicant.

Opposition No. 91264906

Serial No. 88/555,585

Mark **TACO NIGHT**

ANSWER AND AFFIRMATIVE DEFENSES

Applicant Illegal Pete's, LLC ("Applicant"), by and through its attorney, Heuton IP Law, LLC, hereby answers the notice of opposition (the "opposition") filed by Taco Bell IP Holder, LLC ("Opposer") as follows. To the extent not explicitly admitted, all allegations in the opposition are denied.

ANSWER

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 1 and, on that basis, denies them.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 2 and, on that basis, denies them.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 3 and, on that basis, denies them.
4. Denied.
5. Denied.
6. Denied.

7. The materials referenced in Paragraph 7 speak for themselves, and to the extent the allegations in Paragraph 7 vary therewith, Applicant denies them. Applicant denies any and all remaining allegations and/or legal conclusions contained in Paragraph 7.

8. Admitted.

9. The materials referenced in Paragraph 9 speak for themselves, and to the extent the allegations in Paragraph 9 vary therewith, Applicant denies them. Applicant denies any and all remaining allegations and/or legal conclusions contained in Paragraph 9.

10. Admitted.

11. Denied.

12. Denied.

13. Applicant admits it seeks to register TACO NIGHT in connection with meat substitutes; vegetable-based meat substitutes. Applicant denies any and all remaining allegations and/or legal conclusions contained in Paragraph 13.

14. Denied.

15. Paragraph 15 sets forth legal conclusions and questions of law to which no response is required.

16. Denied.

AFFIRMATIVE DEFENSES

Applicant undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. Applicant expressly reserves the right to plead additional affirmative and other defenses should any such defenses be revealed by discovery in this case. As and for its affirmative and other defenses, Applicant states as follows:

First Affirmative Defense

The notice of opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

There is no likelihood of confusion, mistake, or deception between Opposer's mark and Applicant's mark.

Third Affirmative Defense

Any and all acts alleged to have been committed by Applicant were performed with lack of knowledge and lack of willful intent.

WHEREFORE, Applicant requests that the notice of opposition be dismissed with prejudice, together with whatever other relief the Board may deem appropriate.

Respectfully submitted,

HEUTON IP LAW, LLC

Date: October 30, 2020

By: /John C. Heuton/

John C. Heuton (Colorado Bar No. 40,921)

jheuton@heutonip.com

USPTO Customer No. 172,247

14166 Whitney Circle

Broomfield, Colorado 80023

Telephone: 720-513-3040

Attorney for Applicant

Illegal Pete's, LLC

CERTIFICATE OF SERVICE

I, John Heuton, hereby certify that on October 30, 2020, I served a true and correct copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** by electronic mail with notice of delivery receipt requested upon the following:

Anna Kuhn

akuhn@pirkeybarber.com

Elizabeth Stafki

estafki@pirkeybarber.com

PIRKEY BARBER PLLC

1801 East 6th Street, Suite 300 Austin, Texas 78702

Telephone No. 512-322-5200

Attorneys for Opposer Taco Bell IP Holder, LLC

/John C. Heuton/

John C. Heuton