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

Proceeding	91269028
Party	Defendant Speymalt Whisky Distributors Limited
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Submission	Answer
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Signature	/George A. Smith, Jr. /
Date	06/05/2021
Attachments	Answer in SawmillvSpeymalt.pdf(245034 bytes)

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

Sawmill Brewing Company LLC
d/b/a Red Door Brewing Co

Opposer

v.

Speymalt Whisky Distributors
Limited

Applicant

In re Application No. 88/206,608
Filed November 27, 2018
Standard Character Mark
Mark: RED DOOR

Opposition No.: 91269028

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Speymalt Whisky Distributors Limited (hereinafter "Applicant"), by and through its attorneys, Howson & Howson LLP, and pursuant to the Board's Order dated April 28, 2021, hereby submits this Answer to the Notice of Opposition filed by Sawmill Brewing Company, LLC db/a Red Door Brewing Co (hereinafter RDBC). In response to the Notice of Opposition, and with reference to the numbered paragraphs thereof, Applicant answers as follows:

1. Paragraph 1 of the Notice of Opposition is denied insofar as RDBC'S address is concerned. On the contrary, on information and belief, RDBC's Address is 1001 Candelaria Rd. NE. Albuquerque New Mexico 87107. The remainder of paragraph 1 is admitted.

2. The allegations of Paragraph 2 are admitted.

3. The allegations of Paragraph 3 are admitted.

4. The allegations of Paragraph 4 are admitted.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 5, and therefore denies the allegations of Paragraph 5.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 6, and therefore denies the allegations of Paragraph 6.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 7, and therefore denies the allegations of Paragraph 7.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 8, and therefore denies the allegations of Paragraph 8.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the

allegations set forth in Paragraph 9, and therefore denies the allegations of Paragraph 9.

10. The allegations of Paragraph 10 are admitted.

11. To the extent that Paragraph 11 contains legal conclusions, no response is required. Applicant admits the remainder of the allegations of Paragraph 11 of the Petition.

12. The allegations of Paragraph 12 are denied.

13. The allegations of Paragraph 13 are denied.

14. Applicant admits that it intends to use Applicant's mark for gin among other similar and related goods in class 033, but denies that such similar and related goods are closely related to the goods protected by and used in connection with the RDBC Marks.

15. The allegations of Paragraph 15 are denied.

16. The allegations of Paragraph 16 are denied.

17. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 17, and therefore denies the same. To the extent that the second sentence of Paragraph 17 contains legal conclusions, no response is required. Applicant admits that its application was filed on November 27, 2018.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 18, and therefore denies the same.

19. The allegations of paragraph 19 are admitted.

20. Applicant admits that paragraphs 1-19 of the Notice of Opposition have been incorporated into paragraph 20 and realleged therein as if set forth in full. Applicant hereby responds to paragraph 20 by incorporating its responses to paragraphs 1-19.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 21, and therefore denies the same.

22. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 22, and therefore denies the same.

23. Applicant denies the allegation in the first sentence of paragraph 23. Applicant denies the allegation in the second sentence of paragraph 23 and, on the contrary, asserts that not all of RDBC's rights in the RDBC marks commenced as soon as the marks were used.

24. The allegations of Paragraph 24 are denied.

25. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 25, and therefore denies the same.

26. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 26, and therefore denies the same. Applicant denies the allegation in the second sentence of Paragraph 26.

27. The allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 are denied.

29. The allegations of Paragraph 29 are denied.

30. Applicant denies all allegations of the Petition not expressly admitted herein.

SEPARATE DEFENSES

31. No likelihood of confusion exists because the RDBC marks are distinct from the Applicant's Mark.

32. No likelihood of confusion exists because a reasonable consumer will perceive the word combination "BREWING CO.," which is a component of each of the RDBC marks, as implying that the source of the goods offered for sale under the RDBC marks is

entity that exclusively conducts a brewing operation, which would not be utilized in the production of distilled spirits such as gin.

33. The word combination RED DOOR is used by another entity as a component of a trademark for wine, and therefore Applicant's registration of RED DOOR for gin will not unfairly capitalize on distinctiveness of the RDBC Marks.

34. The use of RED DOOR by another entity as a component of a trademark for wine further shows that the RDBC marks are relatively weak and entitled only to a narrow scope of protection.

35. The marks RED DOOR BREWING CO. for beer, and RED DOOR CELLARS for wine, have coexisted for over 10 years without any instances of confusion. The same would be expected in the case of RED DOOR BREWING CO. for beer and RED DOOR for gin.

36. Potential customers will not mistakenly believe that RDBC produces RED DOOR gin because, if RDBC were to produce gin as well as beer, and use the word combination "RED DOOR" in connection with both beer and gin, potential customers would expect it to use qualifying wording corresponding to "BREWING CO.", such as "DISTILLERY" or "DISTILLING CO." for its gin.

37. By the issuance of a notice of publication of the Applicant's mark after having suspended the Applicant's

application pending the issuance of registrations on the RDBC Marks, the Patent and Trademark Office has effectively, and correctly, concluded that the Registration of the Applicant's mark RED DOOR for gin is not likely to cause confusion, mistake, or deception.

PRAYER FOR RELIEF

WHEREFORE, Applicant requests judgment dismissing RBDC's Notice of Opposition and this proceeding in its entirety.

Respectfully submitted this 5th day of June, 2021.

Please charge any required fee associated with this paper, and credit any overpayment, to the Deposit Account of Howson & Howson LLP, Account No. 08-3040.

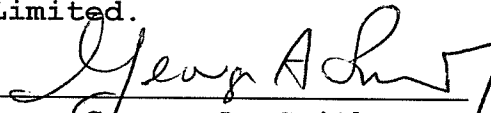
Respectfully submitted,

HOWSON & HOWSON LLP

Attorneys for Applicant,
Speymalt Whisky Distributors
Limited.

Dated: June 5, 2021

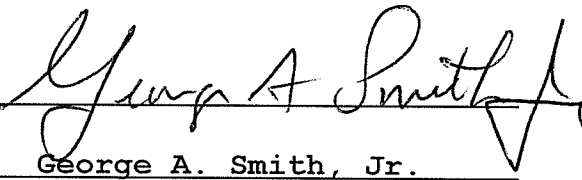
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served on Seth Gardenswartz on June 5, 2021, via email to: seth.gardenswartz@blackgardenlaw.com

Signature: 

Printed Name: George A. Smith, Jr.

Date: June 5, 2021