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

Proceeding	91269443
Party	Defendant Tastemade, Inc.
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Date	06/25/2021
Attachments	Fuse v. Tastemade - Oppo. No. 91269443 - Answer.pdf(121974 bytes)

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Answer to Notice of Opposition is being filed with the TTAB via ESTTA on the date set forth below.

Date: June 25, 2021

/Angelique M. Riordan/
Angelique M. Riordan

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

Fuse, LLC,

Opposer,

v.

Tastemade, Inc.,

Applicant.

Opposition No.: 91-269,443

Serial No.: 88/748,174

Trademark: STRUGGLE MEALS

ANSWER TO NOTICE OF OPPOSITION

Applicant, TASTEMADE, INC. (“Applicant”), of 3019 Olympic Blvd., Stage C, Santa Monica, CA 90404, by its counsel, responds as follows to the Notice of Opposition filed by Opposer, Fuse, LLC (“Opposer”):

1. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
2. Applicant responds that the TSDR record speaks for itself.
3. Applicant responds that the TSDR record speaks for itself.
4. Applicant responds that the TSDR record speaks for itself.
5. Applicant responds that the TSDR record speaks for itself.
6. Applicant responds that the TSDR record speaks for itself.
7. Applicant responds that the TSDR record speaks for itself.
8. Applicant responds that the TSDR record speaks for itself.
9. Applicant responds that the TSDR record speaks for itself.

10. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 and notes that no specific opposition has been identified and, therefore, denies the same leaving Opposer to strict proof thereof. But, to the extent an opposition filed with the TTAB is being referenced, Applicant responds that the TTAB record speaks for itself.
11. Applicant responds that the TTAB record speaks for itself.
12. Applicant responds that the TTAB record speaks for itself.
13. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
14. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
15. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
16. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
17. Denied.
18. Applicant denies the allegations set forth in Paragraph 18 of the Notice of Opposition pertaining to Opposer's alleged use of the STRUGGLE MEALS mark and Applicant states that it lacks knowledge and information sufficient to form a belief as to the truth of any and all other allegations set forth in this paragraph otherwise and, therefore, denies the same, leaving Opposer to strict proof thereof.
19. Denied.

20. Denied.
21. Denied.
22. [The Notice of Opposition does not include a Paragraph 22]
23. Denied.
24. Applicant responds that the TMEP and case law speaks for itself.
25. Applicant responds that the TMEP and case law speaks for itself.
26. Applicant responds that the TSDR record speaks for itself as to Appln. No. 88/748,174 and denies the remainder of the allegations set forth in this paragraph.
27. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
28. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
29. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
30. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.
31. Denied.
32. Denied.
33. Denied.
34. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Notice of Opposition and, therefore, denies the same, leaving Opposer to strict proof thereof.

- 35. Denied.
- 36. Denied.

Affirmative Defenses

- 37. The Notice of Opposition fails to state a claim upon which relief may be granted.
- 38. Where the Examining Attorney assigned to Appln. No. 88/748,174 did not even consider Applicant's STRUGGLE MEALS mark as a whole to be descriptive of the applied-for Class 41 services, it would be contrary to the Examiner's established determination to then consider this mark as a whole generic.
- 39. If Opposer considers Applicant's STRUGGLE MEALS mark generic, it must then consider its own STRUGGLE GOURMET mark of Appln. No. 88/738,043, covering Class 41, equally generic and incapable of registration where, in both cases, the term paired with "STRUGGLE" (in the case of STRUGGLE MEALS, "MEALS," and in the case of STRUGGLE GOURMET, "GOURMET") is disclaimed.
- 40. Opposer failed to raise the issue of genericness or even descriptiveness in its prior Opposition No. 91-256,453 against Appln. No. 88/376,669 for the mark STRUGGLE MEALS in Class 41.
- 41. Applicant's STRUGGLE MEALS mark is not generic.

Dated: June 25, 2021

Martin R. Greenstein
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being served on June 25, 2021 by email to uspto@donthornburgh.com.

/Angelique M. Riordan/
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