

ESTTA Tracking number: **ESTTA1226023**

Filing date: **08/02/2022**

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

Proceeding no.	91276953
Party	Defendant Amoy Food Limited
Correspondence address	RONGFEI FAN BKIP BERNAL CORPORATE PARK 6701 KOLL CENTER PKWY, SUITE 250, RM 224 PLEASANTON, CA 94566 UNITED STATES Primary email: rachelfan@bkipgroup.com Secondary email(s): tm@bkip.com.hk, tm@bkipgroup.com No phone number provided
Submission	Answer
Filer's name	Kevin Viau
Filer's email	tm_docket@iplg.com
Signature	/Kevin Viau/
Date	08/02/2022
Attachments	2022.08.02_Answer to Opp_AMOY_91276953.pdf(120828 bytes)

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

MAY FLOWER INTERNATIONAL, INC.,

Opposer,

v.

AMOY FOOD LIMITED,

Applicant.

Mark: AMOY

Opposition No.: 91276953

Serial No.: 90757571

**APPLICANT'S ANSWER TO NOTICE OF
OPPOSITION**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER

Applicant AMOY FOOD LIMITED hereby answers the Notice of Opposition filed by Opposer MAY FLOWER INTERNATIONAL, INC. as follows.

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and accordingly denies the allegations contained therein.

2. Applicant denies the allegations of Paragraph 2.

3. Applicant denies the allegations of Paragraph 3.

4. Applicant denies the allegations of Paragraph 4.

5. Applicant admits that Opposer filed App. Serial No. 97466977 on June 20, 2022.

Applicant denies any remaining allegations of Paragraph 5, and specifically that Opposer has used its asserted mark in commerce.

6. Applicant admits the allegations of Paragraph 6.

7. Applicant denies the allegations of Paragraph 7.

8. Applicant admits that the AMOY mark filed by Opposer under App. Serial No. 97466977 is confusingly similar to Applicant's subject AMOY mark filed under App. Serial No. 90757571. Applicant, a respected producer of sauces and other food products for nearly thirty years, is the true owner of the AMOY mark. Applicant is the producer of AMOY mooncakes sold in the U.S. since May 2021. Applicant began use of the AMOY brand around 1996 with the sale of sauces, and has numerous registrations for the mark in the U.S. and around the world, including U.S. Reg. No. 2178809 issued on August 4, 1998. Opposer, a tertiary level distributor of Applicant's mooncakes, is attempting to unlawfully usurp Applicant's brand and mark through this bad faith opposition. Opposer has never been granted any right of ownership or control over Applicant's AMOY mark, nor any right to register such mark in the U.S. Indeed a likelihood of confusion exists between the parties' marks, but it is Applicant who is the exclusive, true, priority owner of the AMOY mark, and Opposer who is causing confusion with its unauthorized mark featured in the asserted App. Serial No. 97466977.

9. Applicant admits the allegations of Paragraph 9.

10. Applicant denies the allegations of Paragraph 10, and specifically that its subject AMOY mark is barred from registration.

WHEREFORE, Applicant prays that the Notice of Opposition be denied and dismissed with prejudice, that Application Serial No. 90757571 be permitted to proceed toward registration on the Principal Register, and for such other and further relief as the Board deems just and proper.

AFFIRMATIVE DEFENSES

Pursuant to Fed. R. Civ. P. 8(c) and T.B.M.P. § 311.02(b), Applicant sets forth the following matters constituting avoidance or an affirmative defense.

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition, in its entirety and through each separately stated claim for relief, fails to state facts sufficient to constitute a viable claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Notice of Opposition, in its entirety and through each separately stated claim for relief, is barred due to Opposer's unclean hands. Applicant, as longtime owner of the AMOY brand and producer of the subject AMOY mooncakes, is the rightful owner of the AMOY mark in connection with mooncakes. Opposer has attempted to unlawfully assert its ownership over Applicant's mark. Opposer is a mere low level distributor of Applicant's AMOY mooncakes in the U.S., contracting with a subsidiary of Applicant's primary distributor for the sale of mooncakes starting around May 2021. At all times, Applicant retained all rights to the AMOY mark. Applicant never granted any right of ownership or control to Opposer or any distributor. On information and belief, Opposer knew, and knows, that Applicant is the true owner of the AMOY mark in connection with mooncakes. Opposer could not possibly believe that its mere sub-distribution of Applicant's products established any trademark right for itself. Any sale of Applicant's AMOY mooncakes by Applicant beginning around May 2021 establishes priority rights for Applicant, not Opposer, because the mooncakes and brand are Applicant's. Opposer's unlawful and unconscionable conduct bars its claims.

THIRD AFFIRMATIVE DEFENSE

The Notice of Opposition, in its entirety and through each separately stated claim for relief, is barred due to estoppel. On information and belief, Opposer knew it was selling Applicant's AMOY mooncakes and that Applicant was the true owner of the mark. On information and belief, Opposer would not have been permitted to sell Applicant's AMOY

mooncakes if it failed to recognize Applicant's ownership of the AMOY mark. On information and belief, Opposer continued selling Applicant's AMOY mooncakes with knowledge of Applicant's ownership of the mark, having a bad faith intent to later attempt to claim its own unlawful right to the mark. Opposer is thereby estopped from challenging Applicant's registration of the AMOY mark.

Dated: August 2, 2022

By: /Kevin Viau/

Otto O. Lee

Kevin Viau

INTELLECTUAL PROPERTY LAW GROUP LLP

1871 The Alameda, Suite 250

San Jose, CA 95126

Tel: (408) 286-8933

Fax: (408) 286-8932

Email: tm_docket@iplg.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to this action. I am employed in the County of Santa Clara, California, and my business address is 1871 The Alameda, Suite 250, San Jose, California 95126.

I hereby certify that on August 2, 2022, I served the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** on Opposer via email by sending the document to the person(s) at the email addresses listed below.

GE LI
KEVIN KERVENG TUNG, P.C.
136-20 38TH AVENUE, SUITE 3D
FLUSHING, NY 11354
UNITED STATES
gli@kktlawfirm.com, ligouxuan@hotmail.com, ktung@kktlawfirm.com
Phone: 7189398033

Attorneys for Opposer

Dated: August 2, 2022

By: /Kevin Viau/
Kevin Viau