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

Proceeding no.	91276956
Party	Defendant Long Zhang
Correspondence address	TIMOTHY T. WANG NI, WANG & MASSAND, PLLC 8140 WALNUT HILL LN., STE. 500 DALLAS, TX 75231 UNITED STATES Primary email: twang@nilawfirm.com Secondary email(s): nmassand@nilawfirm.com, tjin@nilawfirm.com 972-331-4600
Submission	Answer
Filer's name	Timothy T. Wang
Filer's email	twang@nilawfirm.com
Signature	/Timothy T. Wang/
Date	09/08/2022
Attachments	2022-9-1 - Answer.pdf(151867 bytes)

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

**MENWITHTHEPOT F/K/A THE COOKING
GUILD LTD.,**

Opposer,

v.

LONG ZHANG,

Applicant.

Opposition No. 91276956

Serial No. 97/003,900

ANSWER OF APPLICANT

Applicant Long Zhang (“Applicant”), by and through its attorney, hereby answers the numbered paragraphs of the Notice of Opposition filed by MENWITHTHEPOT f/k/a THE COOKING GUILD LTD. (“Opposer”) as follows:

1. Applicant admits that Opposer is the applicant of trademark application US Serial Number: 97278409. Applicant admits that the goods and services in International Class 008 that

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Opposer applied for its mark are: Cutlery, kitchen knives, and cutting implements for kitchen use; knives; knives; Japanese, style chopping kitchen knives; knife bags; knife handles; knife holders; knife sharpeners; manual knife sharpeners; knife sharpeners; knife sheaths; knife steels; knives being tableware; tableware, namely, knives, forks and spoons; knives for hobby use; knives for skinning animals; hand operated knives for skinning animals; knives, forks and spoons; knives made of precious metal; table knives made of precious metal; knives, forks and spoons being tableware made of precious metal; shear blades; shears; machetes; penknives; scalpels for hobby use; folding knives; carving knives; ceramic knives; bayonets; bread knives; butcher knives.

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Applicant denies that Opposer’s Mark first use in interstate commerce date is September 11, 2020. Applicant is without knowledge or information sufficient to form a belief as

to the truth of the remaining allegations of Paragraph 1 of the Notice of Opposition and therefore denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant's Mark is ^{men with the pot}. Except as so denied, Applicant admits the remaining allegations of Paragraph 4 of the Notice of Opposition.

5. Denied.

6. Denied.

FIRST AFFIRMATIVE DEFENSE
Failure to State a Claim

The Notice of Opposition fails to state a claim upon which relief may be granted as the Opposer failed to make any factual allegations to support its Applicant not rightful owner of mark for identified goods or services; Deceptiveness; and Fraud on the USPTO grounds for opposition.

SECOND AFFIRMATIVE DEFENSE
Priority

Opposer's own documents show Applicant's Mark has priority over Opposer's Mark. Opposer's own application claims that its Use In Commerce Date and Foreign Application Filing Date/Foreign priority date are January 25, 2022. Exhibit A and 1 TTABVUE, at p. 2. That is half a year later than Applicant's First Use In Commerce Date, which is July 29, 2021. As such, Applicant owns priority on its mark ^{men with the pot}. Opposer's opposition is flawed on its face and should be denied.

Opposer also cannot claim any foreign priority. *Assuming arguendo*, that Opposer filed trademark application for the mark “MenWithThePot” in UK on September 11, 2020¹, it cannot assert priority based on 44(d) as a matter of law. Applicant can acquire a priority right dating back to the filing date in the foreign country only if within 6 months of the filing it applies to the USPTO. 15 U.S.C. § 1126 (d). Opposer filed its application with USPTO on February 22, 2022 – 17 months after its UK filing date. As such, it cannot assert priority date as September 11, 2020, based on its UK filing.

THIRD AFFIRMATIVE DEFENSE
Estoppel

Opposer is barred from asserting a new Use In Commerce Date and Foreign Application Filing Date in its Notice of Opposition that is different from its own trademark application it filed with the U.S. Patent and Trademark Office (“USPTO”).

In its application, it has represented to the USPTO under oath that its Use in Commerce date is January 25, 2022. Exhibit A. It also represented to the USPTO under oath that its Foreign Application Filing Date is January 25, 2022. *Id.* As such, Opposer is estopped from asserting different Use in Commerce and Foreign Application Filing dates in its Notice of Opposition.

PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully prays that the Board:

1. Dismiss the Notice of Opposition in its entirety with prejudice;
2. Issue the Registration of Applicant’s Application Serial No. 97/003,900;
3. Grant Applicant such other and further relief as the Board deems just and proper.

¹ Applicant is without knowledge or information sufficient to form a belief as to the truth and authenticity of the Exhibit A of Opposer’s Notice of Opposition, therefore denies the same.

DATED September 8, 2022.

Respectfully submitted,

By: /s/ Timothy T. Wang
Timothy T. Wang
Texas Bar No. 24067927
twang@nilawfirm.com

NI, WANG & MASSAND, PLLC
8140 Walnut Hill Ln., Ste. 500
Dallas, TX 75231
Tel: (972) 331-4600
Fax: (972) 314-0900

ATTORNEY FOR APPLICANT

CERTIFICATE OF TRANSMISSION

I hereby certify that on September 8, 2022, the foregoing **ANSWER OF APPLICANT** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/>.

By: /s/ Timothy T. Wang
Timothy T. Wang

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER OF APPLICANT** has been served upon Alan F. Feeney and colleagues by forwarding said copy on September 8, 2022 via email to the email addresses on file for Opposer:
Alan@FeeneyLawGroup.com, JSHyde@FeeneyLawGroup.com,
Donald@FeeneyLawGroup.com, kirsten@virtuosolegal.com.

By: /s/ Timothy T. Wang
Timothy T. Wang