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

Proceeding no.	91281544
Party	Plaintiff Cumhuriyet Meats Corporation
Correspondence address	CLINTON DUKE DENTONS DJP 111 SOUTH MAIN STREET 2400 SALT LAKE CITY, UT 84111 UNITED STATES Primary email: clinton.duke@dentons.com Secondary email(s): sarah.matthews@dentons.com, djp.ipmail@dentons.com 801-297-1327
Submission	Opposition/Response to Motion
Filer's name	Clinton Duke
Filer's email	clinton.duke@dentons.com, sarah.matthews@dentons.com, djp.ipmail@dentons.com
Signature	/Clinton Duke/
Date	11/16/2023
Attachments	Opposers Response to Motion to Dismiss.pdf(183999 bytes)

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

<p>CUMHURIYET MEATS,</p> <p style="text-align:center">Opposer,</p> <p>v.</p> <p>AFYON ET VE ET MAMULLERI SANAYI VE TICARET LIMITED SIRKETI,</p> <p style="text-align:center">Applicant.</p>	<p style="text-align:center">Opposition No. 91281544</p> <p style="text-align:center">Serial No. 88585668</p> <p style="text-align:center">Mark: Cumhuriyet Sucuklari</p>
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**OPPOSER’S RESPONSE TO APPLICANT’S MOTION FOR PARTIAL DISMISSAL OF
AMENDED NOTICE OF OPPOSITION**

Opposer Cumhuriyet Meats, (“Opposer”) hereby responds to Applicant’s Motion for Partial Dismissal of Amended Notice of Opposition.

INTRODUCTION

Applicant’s current motion to dismiss (TTABVUE 16) is nearly word for word its first motion to dismiss (TTABVUE 4) with two paragraphs added to the Factual and Procedural History section (TTABVUE 16 at p. 7) and one additional section addressing Opposer’s amended notice (TTABVUE 16 at pp. 8-11). Accordingly, Opposer incorporates herein by reference its original response to Applicant’s first motion to dismiss to respond to those portions also included in the first motion to dismiss. TTABVUE 7.

A. The Amended Notice Remedied The Deficiencies That The Board Identified

In its ruling on Applicant’s first motion to dismiss, the Board noted that Opposer’s original Notice included references to a “stylized word mark ‘Cumhuriyet Sucuklari’” and to the

words “Cumhuriyet Sucuklari.” TTABVUE 8 at p. 6. While both the word mark and the stylized word mark were pleaded, only the stylized word mark was pleaded in paragraphs 2 and 11 of the original Notice. The Board ruled that Opposer’s original Notice was not clear as to whether Opposer was alleging that its common law mark is identical to the mark in its pleaded application and that the original Notice was not clear as to what specific goods were alleged. TTABVUE 8 at pp. 6-7.

Opposer apologizes for not clearly distinguishing between its use of the “stylized word mark ‘Cumhuriyet Sucuklari’” and the word mark “Cumhuriyet Sucuklari.” Opposer intended to allege, and believed that it had alleged, that it used both the stylized word mark and the word mark in its original Notice. Every time it used its stylized word mark in commerce, it necessarily used the word mark as well. However, to provide the fair notice that the Board ruled was lacking, Opposer amended paragraph 2 from alleging that “Opposer already uses the stylized word mark ‘Cumhuriyet Sucuklari’ in U.S. Commerce” to “Opposer has used the mark ‘Cumhuriyet Sucuklari’ and the stylized ‘Cumhuriyet Sucuklari’ mark in U.S. Commerce.” TTABVUE 1 at ¶ 2; TTABVUE 11 at ¶ 2. A similar amendment was made to paragraph 11. TTABVUE 1 at ¶ 11; TTABVUE 11 at ¶ 11. Opposer submits that these small amendments to paragraphs 2 and 11 clarify the identity of Opposer’s alleged common law rights as it alleges that Opposer has used both the stylized word mark included in its application as well as the word mark in U.S. commerce since at least February 7, 2019. TTABVUE 11 at ¶ 2, 11.

Furthermore, amended paragraphs 2 and 11 along with paragraphs 3 and 12 of the Amended Notice makes clear that the pleaded stylized word mark is the same mark, identical to,

the mark included in its pleaded application. Paragraph 2 pleads that “Opposer has used...*the* stylized ‘Cumhuriyet Sucuklari’ mark in U.S. Commerce.” TTABVUE 11 at ¶ 2 (emphasis added); *see also* TTABVUE 11 at ¶ 11. Paragraph 3 pleads that “Opposer has filed Application Serial No. 97062764 [] for *the* stylized ‘Cumhuriyet Sucuklari’ mark in connection with the above goods and services.” TTABVUE 11 at ¶ 3 (emphasis added); *see also* TTABVUE 11 at ¶ 21. By referring to *the* stylized mark, Opposer submits that is has clearly pleaded that the stylized mark it claims common law rights in is the same stylized mark set forth in Application Serial No. 97062764 as well as in the words used in that stylized mark.

Finally, Opposer respectfully submits that the edits to paragraphs 2 and 11 clarify Opposer’s pleaded goods. As Opposer has clarified that its use in commerce includes both the stylized mark set forth in Application Serial No. 97062764 as well as in the words used therein, the identity of the goods are those set forth in paragraph 1 of the Amended Notice. TTABVUE 11 at ¶ 1.

While its amendments were not verbose, Opposer submits that they were sufficient to clarify the marks used and the goods they were used in connection with. To rule otherwise elevates form over substance as both parties are aware Opposer’s use and products.

B. Res Judicata Is Not Applicable To The Instant Situation

Should the Board decide to construe Applicant’s present motion to dismiss as a motion for summary judgment, Opposer incorporates herein by reference is arguments and evidence included in its original response to Applicant’s first motion to dismiss. TTABVUE 7 at pp. 2-9.

Although the parties have been adverse in the past, the issues relevant to this Opposition were not previously adjudicated.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board deny Applicant's partial motion for dismissal.

DATED this 16th day of November, 2023.

Respectfully submitted,
Dentons Durham Jones Pinegar P.C.

/s/ Clinton E. Duke

Clinton E. Duke
Sarah W. Matthews
Dentons Durham Jones Pinegar
111 S. Main Street, Suite 2400
Salt Lake City, UT 84111
djp.ipmail@dentons.com;
clinton.duke@dentons.com
sarah.matthews@dentons.com;
Attorneys for Opposer Cumhuriyet Meats

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR PARTIAL DISMISSAL OF AMENDED NOTICE OF OPPOSITION** has been served on Applicant Afyon Et ve Et Mamulleri Sanayi ve Ticaret Limited Sirketi by forwarding said copy on November 16, 2023 via email to:

MATTHEW D. ASBELL
OFFIT KURMAN P.A.
590 MADISON AVENUE, 6TH FLOOR
NEW YORK, NY 10022
UNITED STATES
Primary Email: trademarks@offitkurman.com
Secondary Email(s): matthew.asbell@offitkurman.com, alison.pratt@offitkurman.com,
dionne.heard@offitkurman.com
Phone: 929-476-0048

/s/ Clinton E. Duke

DATED this 16th day of November, 2023