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

Proceeding no.	91282214
Party	Defendant Obshchestvo s ogranichennoy otvetstvennostyu "Beverages from Chernogolovka-Aqualife"
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Date	04/17/2023
Attachments	Fun Wine v Fun_Ola_ Answer to Notice of Opposition with defenses .pdf (148288 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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FUN WINE (USA) LLC,)	Opposition No. 91282214
)	
Opposer,)	
)	Serial No. 90-876,773
v.)	Mark: FUN+OLA & Design
)	
Obshchestvo s ogranichennoy)	Published in the Official Gazette
otvetstvennostyu “Beverages from)	on 6/14/2022
Chernogolovka-Aqualife,”)	
)	
_____ Applicant.		

ANSWER TO NOTICE OF OPPOSITION


Obshchestvo s ogranichennoy otvetstvennostyu “Beverages from Chernogolovka-Aqualife” (hereinafter “Applicant”) submits its Answer to the Notice of Opposition (“Opposition”) filed by FUN WINE (USA) LLC (“Opposer”). To the extent any allegation of the Opposition is not expressly and specifically admitted herein, that allegation is hereby denied.

With respect to the allegations in the preamble to the Opposition, Applicant hereby states that it is without knowledge or information sufficient to form a belief as to: (a) Opposer’s state of formation, and therefore denies such allegations; (b) Opposer’s beliefs as to whether it will allegedly be damaged by Applicant’s registration of the subject mark, and therefore expressly denies such allegations.

Applicant responds to the numbered paragraphs of the Opposition as follows:

1. Applicant responds that U.S. Trademark Registration Nos. 4472297, 5973651 are the records of the U.S. Patent and Trademark Office (“USPTO”), which are public records and speak for themselves, and Applicant denies any allegations inconsistent with such records.

Further, Applicant is without knowledge or information sufficient to form a reasonable belief as to the remaining allegations of Paragraph 1, and accordingly denies the same. In particular, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations that “Opposer is the owner of the common-law rights in the distinctive FRIENDS FUN WINE, FUN WINE, and FUN trademarks” (to which Opposer refers to as “Opposer’s Marks”).

2. Applicant admits that on August 11, 2021, it filed U.S. Application Serial No. 90876773 for the mark  (“Applicant’s Mark”) for use in connection with “Mineral and aerated waters and other nonalcoholic beverages, namely, water-based beverages also containing herbal extracts or flavored syrup; fruit beverages and fruit juices; syrups for making non-alcoholic beverages” in International Class 32. Applicant further states that the records of the USPTO are public records and speak for themselves. Except as expressly admitted herein, Applicant denies each and every other allegation set forth in Paragraph 2 of the Opposition.

3. Applicant denies that Applicant’s use of the FUN+OLA & Design mark will cause a likelihood of confusion between Opposer’s Marks and Applicant’s Mark. Applicant states that the remainder of the allegations in Paragraph 3 constitutes a legal conclusion to which no response is necessary.

4. Denied.

5. Denied.

6. Applicant is without knowledge or information sufficient to form a reasonable belief as to the allegations of Paragraph 6, and accordingly denies the same.

7. Applicant is without knowledge or information sufficient to form a reasonable belief as to the allegations of Paragraph 7, and accordingly denies the same.

8. Applicant is without knowledge or information sufficient to form a reasonable belief as to the allegations of Paragraph 8, and accordingly denies the same.

9. Applicant is without knowledge or information sufficient to form a reasonable belief as to the allegations of Paragraph 9, and accordingly denies the same.

10. Denied.

11. Applicant denies that registration of Applicant's FUN+OLA & Design mark would be a source of damage and injury to Opposer. Applicant states that the remainder of the allegations in Paragraph 11 constitutes a legal conclusion to which no response is necessary. To the extent that this paragraph contains any affirmative allegations, Applicant denies the same.

12. Denied.

13. Denied.

DEFENSES AND AMPLIFICATIONS

14. Applicant repeats and realleges its Answer in Paragraphs 1 through 13 as though fully set forth herein.

15. Opposer's Notice of Opposition does not set forth a claim upon which the relief sought may be granted.

16. There is no likelihood of confusion between the Application and Opposer's asserted rights because, among other reasons, the goods identified in the Application are different, distinct, and unrelated to the goods identified and/or allegedly sold by Opposer in connection with the asserted marks.

17. Opposer should be denied all relief because it is before the Trademark Trial and Appeal Board with unclean hands.

18. Opposer should be denied all relief on the grounds of laches, estoppel, unreasonable delay and acquiescence.

19. Opposer lacks standing because the allegations in support of Opposer's belief that it will suffer damage do not have a reasonable basis in fact, as its claims of likelihood of confusion are without merit and insufficient to show a real interest in the proceeding.

Without waiving any of the specific denials set forth in its Answer, and without assuming the burden of proof when such burden would otherwise be on Opposer, Applicant hereby states and asserts the above as defenses and/or amplifications to the Opposition. Applicant reserves its right to amend its Answer to assert any affirmative defense or counterclaim that is later discovered during this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that:

- (a) this Opposition be dismissed with prejudice;
- (b) U.S. Application Serial No. 90-876,773 be allowed; and
- (c) requests that the Board grant all other and further relief to which Applicant is entitled.

April 17, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on this 17th day of April, 2023 via email and addressed to:

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