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

Proceeding	92056016
Party	Defendant Margarita's Mexicanas, Inc.
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Date	09/21/2012
Attachments	Answer - Margarita Cancellation filed.pdf ( 6 pages )(104761 bytes )

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

In the Matter of:  
Registrations Nos. 3,317,491 and 3,339,506  
For the marks: MARGARITA’S RESTAURANTE  
MEXICANO & design and MARGARITA’S

M.T.C., INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92056016
	)	
MARGARITA’S MEXICANAS, INC.	)	
	)	
Respondent.	)	

**ANSWER TO PETITION**

Comes now the Respondent, Margarita’s Mexicanas, Inc., by and through its undersigned counsel, and answers the Petition for Cancellation (the “Petition”) filed by M.T.C., Inc. against Registrations Nos. 3,317,491 and 3,339,506 for the marks “MARGARITA’S RESTAURANTE MEXICANO & design” and “MARGARITA’S”, as follows:

1. As to Paragraph 1 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.<sup>1</sup>
2. As to Paragraph 2 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
3. Respondent admits the allegations contained in Paragraph 3 of the Petition.

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<sup>1</sup> Respondent notes that an online “Taxable Entity Search” conducted on September 18, 2012 at <https://ourcpa.cpa.state.tx.us/coa/Index.html> shows that there is a Texas corporation named “MTC, Inc.”, but there is no Texas corporation named “M.T.C., Inc.” Respondent does not have sufficient knowledge of the laws of the State of Texas to determine the effect of this information on the allegations made by the Petitioner. However, for the purposes of this Answer, Respondent will assume that MTC, Inc. is the legal equivalent of M.T.C., Inc., while reserving the right to assert any applicable defenses or counter-claims if this is incorrect.

4. Paragraph 4 of the Petition is a legal conclusion which assumes facts not in evidence. To the extent that a response is required, the Respondent denies the allegations contained therein.
5. As to Paragraph 5 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
6. As to Paragraph 6 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
7. As to Paragraph 7 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
8. As to Paragraph 8 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
9. As to Paragraph 9 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
10. As to Paragraph 10 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
11. As to Paragraph 11 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
12. As to Paragraph 12 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
13. As to Paragraph 13 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
14. Respondent admits the allegations contained in Paragraph 14 of the Petition.
15. Respondent admits the allegations contained in Paragraph 15 of the Petition.
16. Respondent admits the allegations contained in Paragraph 16 of the Petition.

17. Respondent admits the allegations contained in Paragraph 17 of the Petition, but notes that the assignment from Fraterfood Service, Inc. was nunc pro tunc as of August 22, 2006.
18. Respondent admits the allegations contained in Paragraph 18 of the Petition.
19. Respondent admits the allegations contained in Paragraph 19 of the Petition.
20. Respondent admits the allegations contained in Paragraph 20 of the Petition.
21. As to Paragraph 21 of the Petition, Respondent denies such allegations as phrased. Respondent notes that Google Translate may provide different results depending on a number of factors and that the translation provided is inexact.
22. Respondent admits the allegations contained in Paragraph 22 of the Petition.
23. As to Paragraph 23 of the Petition, Respondent denies such allegations as phrased. Respondent notes that Google Translate may provide different results depending on a number of factors and that the translation provided is inexact.
24. As to Paragraph 24 of the Petition, Respondent denies such allegations as phrased.
25. As to Paragraph 25 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
26. Respondent admits the allegations contained in Paragraph 26 of the Petition.
27. Respondent admits the allegations contained in Paragraph 27 of the Petition.
28. Respondent admits the allegations contained in Paragraph 28 of the Petition.
29. As to Paragraph 29 of the Petition, Respondent does not have sufficient information to form a belief as to the allegations contained therein and therefore denies such allegations.
30. Respondent denies the allegations contained in Paragraph 30 of the Petition.
31. Respondent denies the allegations contained in Paragraph 31 of the Petition.
32. Respondent admits the allegations contained in Paragraph 32 of the Petition in part, in that MARGARITA and MARGARITA's have a similar sound and appearance. Respondent denies the allegations contained in Paragraph 32 of the Petition in part, in that MARGARITA and MARGARITA'S have different meanings.

33. Respondent admits the allegations contained in Paragraph 33 of the Petition in part, in that MARGARITA'S can be the possessive form of the word MARGARITA. Respondent denies the allegations contained in Paragraph 32 of the Petition in part, in that MARGARITA'S can be a contraction of the phrases "MARGARITA is" or "MARGARITA has."
34. Respondent admits the allegations contained in Paragraph 34 of the Petition.
35. Respondent admits the allegations contained in Paragraph 35 of the Petition.
36. Respondent admits the allegations contained in Paragraph 36 of the Petition.
37. Respondent admits the allegations contained in Paragraph 37 of the Petition.
38. Respondent denies the allegations contained in Paragraph 38 of the Petition.
39. Respondent denies the allegations contained in Paragraph 39 of the Petition.
40. Respondent denies the allegations contained in Paragraph 40 of the Petition.
41. Any other allegations in the Petition that have not been specifically admitted herein should be considered as though they have been expressly denied by Respondent.

#### **AFFIRMATIVE DEFENSES**

1. Respondent incorporates by reference, as if fully restated herein, all of its responses contained in paragraphs 1 through 41, above.
2. Laches.
3. Petitioner has suffered no damages, as alleged in the Petition.
4. In the alternative, and to the extent that it is determined that one or both of the Mexicana's Registrations is subject to cancellation, Respondent is entitled to concurrent use registrations limited to the Commonwealth of Puerto Rico.
5. Respondent reserves the right to present additional affirmative defenses or file counter-claims that may be identified or discovered as a result of or during the discovery period in this case.

In view of the foregoing, Respondent respectfully contends that the Petition for Cancellation is groundless and requests that it be immediately dismissed.

Dated September 21, 2012  
San Juan, Puerto Rico

Respectfully Submitted,  
MARGARITA'S MEXICANAS, INC.

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[CERTIFICATES OF TRANSMISSION AND SERVICE ON FOLLOWING PAGE]

### CERTIFICATE OF TRANSMISSION

I, Travis D. Wheatley, hereby certify that the foregoing **Answer to Petition** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals (“ESTTA”) at <http://estta.uspto.gov/> on September 21, 2012.

By: /Travis D. Wheatley/  
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### CERTIFICATE OF SERVICE

I, Travis D. Wheatley, state that I served a copy of the foregoing **Answer to Petition**, via UPS Overnight Delivery Tracking No. 1Z 725 102 01 4836 1046, postage prepaid, upon Petitioner at the following address:

William B. Nash, Esq.  
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in accordance with Trademark Rule § 2.119 and TBMP §311.01(c) on this 21st day of September 2012.

/Travis D. Wheatley/  
Travis D. Wheatley