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

Proceeding	92056269
Party	Defendant The Clean Plate Club, Inc.
Correspondence Address	THE CLEAN PLATE CLUB INC 7225 HERITAGE SQUARE DRIVE GRANGER, IN 46530 UNITED STATES
Submission	Answer
Filer's Name	Daliah Saper
Filer's e-mail	dsaper@saperlaw.com, chris@saperlaw.com
Signature	/Daliah Saper/
Date	10/12/2012
Attachments	TTAB_ Bar Louie v. Uptown Dining _ Answer.pdf (7 pages)(562916 bytes)

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

In the matter of Registration No. 4,121,825

Filed: Aug. 19, 2011

Date Issued: Apr. 03, 2012

BL RESTAURANT OPERATION, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92056269
)	
UPTOWN DINING GROUP I, INC. f/k/a THE)	
CLEAN PLATE CLUB, INC.,)	
)	
Registrant.)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant’s Answer to Notice of Cancellation

Applicant Uptown Dining Group I, Inc. f/k/a The Clean Plate Club, Inc. (“Uptown Dining Group,” “Respondent,” “Registrant”) through its undersigned attorneys, submits its Answer to the Notice of Cancellation (“Cancellation”) filed by BL Restaurant Operation, LLC, (“Petitioner”) dated October 3, 2012 as follows:

1. Upon information and belief, Respondent is an Indiana corporation with a place of business at 7225 Heritage Square Drive, Granger, Indiana 46530.
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Answer: Respondent admits the allegations in Paragraph 1.

2. Upon information and belief, Respondent is the owner of Registration No. 4,121,825 for the mark EAT WELL. DRINK WELL. BE HAPPY. in Class 43 for restaurant and bar services.

Answer: Respondent admits the allegations in Paragraph 2.

3. Upon information and belief, Respondent filed a United States application on August 19, 2011, which issued on April 3, 2012.

Answer: Respondent admits the allegations in Paragraph 3.

4. Upon information and belief, Respondent was using EAT WELL. DRINK WELL. BE HAPPY. to identify restaurant and bar services associated with the following entities The Mark Dine & Tap, Uptown Kitchen, and The Clean Plate Club.

Answer: Respondent admits that it uses the mark EAT WELL. DRINK WELL. BE HAPPY. in connection with the restaurants The Mark Dine & Tap and Uptown Kitchen and that it has used the mark in connection with the corporate entity The Clean Plate Club, Inc.

5. Upon information and belief, The Mark Dine & Tap was not established until 2011 and Respondent is no longer doing business as The Clean Plate Club.

Answer: Respondent denies the allegations in Paragraph 5.

6. Petitioner is a Delaware Corporation and is the owner of Registration No. 3,322,988 (the "988 Registration") for the mark EAT·DRINK·BE HAPPY in Class 43 for restaurant and bar services, which is in full force and effect. A copy of the '988 Registration is attached hereto as Exhibit A.

Answer: Respondent lacks information sufficient to form a belief as to the allegations in Paragraph 6.

7. Petitioner is the assignee of the '988 Registration, as evidence by the Trademark Assignment duly filed and recorded with the USPTO at Reel/Frame 4227/0865, and attached hereto as Exhibit B.

Answer: Respondent lacks information sufficient to form a belief as to the allegations in Paragraph 7.

8. Petitioner's right to the EAT·DRINK·BE HAPPY trademark dates back, in part through its predecessor-in-interest, to at least 1998.

Answer: Respondent denies the allegations in Paragraph 8.

9. The EAT·DRINK·BE HAPPY mark is inherently distinctive and has also acquired significant secondary meaning. As a result of approximately 14 years of continuous use, the EAT·DRINK·BE HAPPY mark has become a source identifier for restaurant and bar services.

Answer: Respondent denies the allegations in Paragraph 9.

10. Petitioner has priority over Respondent's mark and does not have to prove prior use because Petitioner's application filing date is January 25, 2007, and Respondent's claimed first use in commerce is August 1, 2007.

Answer: Respondent denies the allegations in Paragraph 10.

11. Respondent's EAT WELL. DRINK WELL. BE HAPPY. mark so closely resembles Petitioner's EAT·DRINK·BE HAPPY mark in sound, appearance, connotation and commercial impression so as to cause a likelihood of confusion under 15 U.S.C. § 1052(d).

Answer: Respondent denies the allegations in Paragraph 11.

12. Respondent's and Petitioner's marks are both registered in Class 43 for restaurant and bar services.

Answer: Respondent admits the allegations in Paragraph 12.

13. Petitioner uses its EAT·DRINK·BE HAPPY mark in connection with providing restaurant and bar services under the federally protected trademark "Bar Louie." In terms of trade channels, Petitioner owns 47 Bar Louie locations. In addition, Petitioner has 14 Bar Louie franchises with two additional franchises opening soon. Petitioner's 61 locations operate in 21 states, creating nationwide presence and consumer recognition. Presently, Petitioner has two locations in Indiana, one in Mishawaka and one in Evansville. Petitioner is aggressively expanding with plans to operate 100 locations, including immediate expansion into Merrillville, Indiana.

Answer: Respondent lacks information sufficient to form a belief as to the allegations in Paragraph 13.

14. Petitioner's EAT·DRINK·BE HAPPY mark is strong and incontestable as it has been used in Bar Louie locations nationally and has been advertised via multiple marketing channels, including but not limited to, the Internet, television, radio, print media, and social media since 1998.

Answer: Respondent denies the allegations in Paragraph 14.

15. Petitioner also incorporates its EAT·DRINK·BE HAPPY mark in the signs and menus at all of the Bar Louie locations.

Answer: Respondent lacks information sufficient to form a belief as to the allegations in Paragraph 15.

16. Petitioner's mark is recognized by Petitioner's customers and the general public as a symbol of quality goods and services.

Answer: Respondent denies the allegations in Paragraph 16.

17. Based on information and belief, Respondent is using its EAT WELL. DRINK WELL. BE HAPPY. mark at Uptown Kitchen to provide restaurant and bar services at 7225 Heritage Square Drive, Granger, Indiana.

Answer: Respondent admits the allegations in Paragraph 17.

18. Based on information and belief, Respondent is using its EAT WELL. DRINK WELL. BE HAPPY. mark at The Mark Dine & Tap to provide restaurant and bar services at 1234 Eddy Street, Suite 111, South Bend, Indiana.

Answer: Respondent admits the allegations in Paragraph 18.

19. Petitioner also advertises, in part, on the Internet.

Answer: Respondent lacks information sufficient to form a belief as to the allegations in Paragraph 19.

20. Based on information and belief, Respondent advertises on the Internet at <http://uptowndininggroup.com/>, <http://theuptownkitchen.com/menu>, and <http://themarkdineandtap.com>.

Answer: Respondent admits the allegations in Paragraph 20.

21. Due to the close proximity of Respondent's restaurants to Bar Louie restaurants located in Mishawaka and Evansville and soon to be located in Merrillville, Indiana, due to the use of similar trade channels, and due to the undeniable similarity between the marks, purchasers of services from Petitioner and Respondent are likely to be confused as to the source of restaurant and bar services.

Answer: Respondent denies the allegations in Paragraph 21.

22. Based on the foregoing paragraphs, Respondent's mark, EAT WELL. DRINK WELL. BE HAPPY., so closely resembles Petitioner's mark, EAT·DRINK·BE HAPPY, so as to cause a likelihood of confusion. Respondent's mark is likely to confuse, to cause mistake to, or deceive the consuming public as to the source of Respondent's services. This confusion, mistake and deception are causing and will continue to cause irreparable damage to Petitioner's business and goodwill.

Answer: Respondent denies the allegations in Paragraph 22.

Affirmative Defenses

1. Prior Use. Respondent acquired common law rights in the mark EAT WELL. DRINK WELL. BE HAPPY. prior to Petitioner's federal registration of the mark EAT • DRINK • BE HAPPY and prior to Petitioner's use of that mark within Respondent's geographic region.
2. Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

DATED October 12, 2012.

Respectfully submitted,
Uptown Dining Group I, Inc.

By: /s/Daliah Saper
One of its Attorneys
Daliah Saper
Saper Law Offices, LLC
505 N. LaSalle Suite 350
Chicago, IL 60654
Telephone: (312) 527-4100
Fax: (312) 527-5020

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Answer to Notice of Cancellation is being deposited with the United States Postal Service with sufficient postage as first-class mail on October 12, 2012 in an envelope addressed to counsel for Petitioner at:

Caroline Pace
Kane Russell Coleman & Logan
919 Milam Street Suite 2200
Houston, TX 77002
UNITED STATES

/s/ Daliah Saper

Daliah Saper