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

Proceeding	92061991
Party	Defendant Oregon Honey Products LLC
Correspondence Address	OREGON HONEY PRODUCTS LLC 33848 SE EASTGATE CIRCLE CORVALLIS, OR 97333 UNITED STATES
Submission	Answer
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Date	09/22/2015
Attachments	NectarCreek-Propolis-PCancel-Answer.pdf(370770 bytes)

belongs to Petitioner. Nectar Creek does not knowingly and intentionally waive any applicable defenses, and it reserves all rights to assert and rely upon other defenses and affirmative defenses that become available as discovery proceeds. As separate and distinct affirmative defenses, Nectar Creek states as follows:

1. The Petition fails to state a claim upon which relief can be granted based, in part, on Petitioner's lack priority over Nectar Creek, the absence of any likelihood of confusion, mistake, deception or false connection, and the lack of fame of the mark allegedly owned and asserted in the Petition.
2. Petitioner's claims are barred by estoppel by laches, estoppel, acquiescence, and/or equitable estoppel. Petitioner did not file an Application for Registration of its claimed mark until July 16, 2015, shortly before filing its Petition with this Board and approximately 8 months after Nectar Creek filed its Application for Registration. Nectar Creek has relied on Petitioner's acquiescence, inaction, and delay to enforce its alleged rights, insofar as Nectar Creek has invested substantial time, effort, and resources in selecting, adopting, and using its mark. Upon information and belief, Petitioner knew or should have known of Nectar Creek's mark before the filing of the Petition before this Board and before filing its Application for Registration. As a result, Nectar Creek has detrimentally relied on Petitioner's delay, inaction, and acquiescence and will be damaged if the Petition is sustained because it will be denied the benefits associated with and granted by a federal trademark registration for its mark and the goods and services associated with its registered mark.
3. Nectar Creek's mark is not likely to cause confusion, mistake, or deception with Petitioner's purported mark as used in commerce based, in part, on the overall differences between the parties' respective mark in appearance and commercial impression and the distinct contexts and manners of use.

7. Upon information and belief, Petitioner has not and is not likely to suffer any injury or damage as a result of Nectar Creek's use and registration of its mark.
5. Upon information and belief, Petitioner's goods are distributed in a very limited number of geographical areas and Petitioner's rights, if any (all of which Nectar Creek denies), are limited to common law rights in a limited number of geographic areas.
 6. Upon information and belief, Petitioner has used the mark Propolis as a tradename of its corporation, Propolis Brewing, LLC and not as a trademark identifying goods and services.
 7. The mark of Nectar Creek and the mark of Petitioner are not used with related goods, do not emanate from a single source under a single mark, and do not refer to complementary products that would be bought and used together.
 8. Nectar Creek reserves the right to rely on any and all further affirmative defenses that become available or appear during discovery in this matter, and reserves the right to amend this Answer for the purpose of asserting any such affirmative defenses.

Wherefore, Nectar Creek requests that Amended Petition to Cancel be denied and that the Trademark Trial and Appeal Board enter such other orders and rulings consistent with this request as permitted by law, rule, or regulation.

Dated September 22, 2015

Rubin & Zimmerman, PC



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer of Nectar Creek to Amended Petition to Cancel has been served on counsel set forth below by mailing said copy on September 22 10, 2015, via First Class Mail, postage prepaid and by email to said counsel set forth below.

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