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

Proceeding	92064803
Party	Defendant Peeters Produkten B.V.
Correspondence Address	PEETERS PRODUKTEN B V LEEMSTRAAT 13, NL-4705 RT ROSENDAAL, NETHERLANDS
Submission	Answer
Filer's Name	Thomas J. Mango
Filer's e-mail	tmango@cantorcolburn.com, nwatson@cantorcolburn.com
Signature	/Thomas J. Mango/
Date	12/22/2016
Attachments	Answer and Affirmative Defenses.PDF(134798 bytes )

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

In the Matter of Registered Trademark Serial No.	4409158
Filed:	October 30, 2012
Mark:	COOKINOTTI
Registered:	October 1, 2013

NOTTI LLC,

Petitioner,

v.

PEETERS PRODUKTEN B.V.,

Respondent.

Cancellation No. 92064803

**ANSWER AND AFFIRMATIVE DEFENSES**

Pursuant to TBMP §§ 310 and 311, Respondent Peeters Produkten B.V. (“Peeters”), acting by and through its undersigned counsel, hereby responds to Petitioner Notti LLC’s (“Notti LLC”) Petition for Cancellation as follows:

1. Peeters denies the allegations contained in paragraph 1 of the Petition for Cancellation.
2. Peeters is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition for Cancellation.
3. Peeters admits that United States Trademark Registration No. 4016439 (“the ‘439 Registration”) speaks for itself. Peeters denies the remaining allegations contained in paragraph 3 of the Petition for Cancellation.
4. Peeters admits that ‘439 Registration speaks for itself. Peeters denies the remaining allegations contained in paragraph 4 of the Petition for Cancellation.

5. Peeters denies the allegations contained in paragraph 5 of the Petition for Cancellation.

6. Peeters admits that United States Trademark Registration No. 4409158 (“the ‘158 Registration”) speaks for itself. Peeters denies the remaining allegations contained in paragraph 6 of the Petition for Cancellation.

7. Peeters denies the allegations contained in paragraph 7 of the Petition for Cancellation.

8. Peeters is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Petition for Cancellation and, therefore, denies the same.

9. Peeters is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Petition for Cancellation and, therefore, denies the same.

10. Peeters denies the allegations contained in paragraph 10 of the Petition for Cancellation.

11. Peeters denies the allegations contained in paragraph 11 of the Petition for Cancellation.

12. Peeters is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Petition for Cancellation and, therefore, denies the same.

13. Peeters admits that United States Trademark Registration No. 4771828 (“the ‘828 Registration”) speaks for itself. Peeters denies the remaining allegations contained in paragraph 13 of the Petition for Cancellation.

14. Peeters denies the allegations contained in paragraph 14 of the Petition for Cancellation.

15. Peeters denies the allegations contained in paragraph 15 of the Petition for Cancellation.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Notti LLC's claims alleged in the Petition for Cancellation fail to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Notti LLC's claims alleged in the Petition for Cancellation lack merit and are insufficient to support a cancellation against the '158 Registration.

#### **THIRD AFFIRMATIVE DEFENSE**

Notti LLC will not suffer any damages or harm by Peeters' '158 Registration and use of its COOKIE NOTTI Mark as identified in the '158 Registration.

#### **FOURTH AFFIRMATIVE DEFENSE**

Peeters applied for and obtained its '158 Registration for its COOKIE NOTTI Mark as identified in the '158 Registration in good faith.

#### **FIFTH AFFIRMATIVE DEFENSE**

Notti LLC's claims are barred by unclean hands, laches, acquiescence, waiver, and/or estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

There is no likelihood of confusion, mistake, or deception between Peeters' COOKINOTTI Mark as identified in the '158 Registration and the marks Notti LLC asserted in the Petition for Cancellation including the '439 Registration and the '828 Registration because the marks are not confusingly similar.

**SEVENTH AFFIRMATIVE DEFENSE**

There is no likelihood of confusion, mistake, or deception between Peeters' COOKINOTTI Mark as identified in the '158 Registration, as well as Peeters' United States Trademark Registration No. 4848515 for COOKIE NOTTI, and the marks Notti LLC asserted in the Petition for Cancellation because the marks have coexisted for several years.

**EIGHTH AFFIRMATIVE DEFENSE**

There is no likelihood of confusion, mistake, or deception between Peeters' COOKINOTTI Mark as identified in the '158 Registration, as well as Peeters' United States Trademark Registration No. 4848515 for COOKIE NOTTI, and the marks Notti LLC asserted in the Petition for Cancellation because the products are targeted to different consumers and are sold on different shelves and/or different sections of a store.

**NINTH AFFIRMATIVE DEFENSE**

There is no likelihood of confusion, mistake, or deception between Peeters' COOKINOTTI Mark as identified in the '158 Registration, as well as Peeters' United States Trademark Registration No. 4848515 for COOKIE NOTTI, and the marks Notti LLC asserted in the Petition for Cancellation because of the number of third party marks on the United States Patent and Trademark Office's Registry and in common law use including DUO PENOTTI,

PENOTTI, and ROSSIGNOTTI that have coexisted with Notti LLC's asserted marks for varying time periods.

**TENTH AFFIRMATIVE DEFENSE**

Peeters reserves its right to amend its Answer to the Petition for Cancellation, to amend its Affirmative Defenses, to assert such additional Affirmative Defenses as it deems appropriate and such Counterclaims as may be permitted that may now exist or in the future are available based on discovery and further factual investigation in this proceeding.

**WHEREFORE**, Respondent Peeters Produkten B.V. respectfully requests that the Trademark Trial and Appeal Board dismiss the above-captioned Petition for Cancellation in its entirety, that the Board allow United States Trademark Registration No. 4409158 for the mark COOKINOTTI to remain on the register, and that the Board grant Respondent Peeters Produkten B.V. such other relief as it deems just and appropriate.

Dated: December 22, 2016

Respectfully submitted,

**Peeters Produkten B.V.**

By: Thomas J. Mango/  
Thomas J. Mango, Esq.  
**Cantor Colburn LLP**  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, CT 06103-3207  
Phone: 860-286-2929  
Fax: 860-286-0115  
[tmango@cantorcolburn.com](mailto:tmango@cantorcolburn.com)

Attorneys for Peeters Produkten B.V.

**CERTIFICATE OF SERVICE**

I, Thomas J. Mango, Esq., counsel to Respondent Peeters Produkten B.V., in Cancellation No. 92064803, certify that, on the 22<sup>nd</sup> day of December 2016, I served a copy of ANSWER AND AFFIRMATIVE DEFENSES, via first class mail, postage prepaid, upon:

Margaret Bitler  
Notti LLC  
P.O. Box 537  
214 Glade Valley Church Road  
Glade Valley, NC 28668  
[peggybitler@aol.com](mailto:peggybitler@aol.com)

/Thomas J. Mango/  
Thomas J. Mango, Esq.