

ESTTA Tracking number: **ESTTA1160659**

Filing date: **09/20/2021**

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

Proceeding	92077648
Party	Plaintiff VBNJ, Inc.
Correspondence Address	JASON G. ELDRED KROGH & DECKER, LLP 555 CAPITOL MALL, SUITE 700 SACRAMENTO, CA 95814 UNITED STATES Primary Email: jasoneldred@kroghdecker.com Secondary Email(s): derekdecker@kroghdecker.com, kel-seynestor@kroghdecker.com 916-498-9000
Submission	Answer to Counterclaim
Filer's Name	Jason G. Eldred
Filer's email	jasoneldred@kroghdecker.com, derekdecker@kroghdecker.com, gloriakukur-yak@kroghdecker.com, inessakondrya@kroghdecker.com, juliamartell@kroghdecker.com
Signature	/Jason G. Eldred/
Date	09/20/2021
Attachments	20210920 VBNJ Answer to Counter-Petition.pdf(46990 bytes) 20210920 Certificate of Service re VBNJ First Amended Petition and Answer to CounterPetition.pdf(42917 bytes)

KROGH & DECKER, LLP
 DEREK C. DECKER (SBN 232243)
 JASON G. ELDRED (SBN 327148)
 555 Capitol Mall, Suite 700
 Sacramento, California 95814
 Telephone: 916.498.9000
 Facsimile: 916.498.9005
 Attorneys for PETITIONER
 VBNJ, Inc. dba Mt. Shasta Brewing Co.

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

VBNJ, INC. dba MT. SHASTA BREWING)	Proceeding No.: 92077648
CO., a California corporation,)	
Opposer,)	PETITIONER VBNJ, INC. dba MT.
v.)	SHASTA BREWING CO.'S ANSWER TO
WEED CELLARS, INC., a Nevada)	RESPONDENT WEED CELLARS, INC.'S
corporation,)	COUNTERPETITION
Applicant.)	Serial No.: 88978649
)	Registration No: 6,381,999
)	Mark: "Weed"
)	Application Filed: April 19, 2019
)	Certificate Issued: June 8, 2021
)	
)	
)	

PETITIONER’S ANSWER AND AFFIRMATIVE DEFENSES

Petitioner VBNJ, Inc. dba Mt. Shasta Brewing Co.’s (“VBNJ”) submits this Answer and Affirmative Defenses in response to Respondent Weed Cellars Inc.’s (“Weed Cellars”) Counter-petition pursuant to 37 C.F.R. § 2.114 and responds to the factual allegations in the Counter-petition as follows:

ANSWER

As for the specific Answer to the specific allegations in the unnumbered, introductory paragraph to the Counter-petition, VBNJ admits that there currently is U.S. Trademark Registration No. 4312889 for the stylized design mark WEED WEED GOLDEN

PETITIONER VBNJ, INC. dba MT. SHASTA BREWING CO.’S ANSWER TO RESPONDENT WEED CELLARS, INC.’S COUNTERPETITION

ALE MT SHASTA BREWING CO. WEED, CA, and any other facts on record at the USPTO, but denies all other claims and allegations therein.

GROUND ONE - ABANDONMENT

1. VBNJ admits the allegations in paragraph 1.
2. VBNJ admits the allegations in paragraph 2.
3. VBNJ lacks sufficient facts to admit or deny the allegations in paragraph 3.
4. VBNJ denies the allegations in paragraph 4.
5. VBNJ denies the allegations in paragraph 5.
6. VBNJ denies the allegations in paragraph 6.
7. VBNJ denies the allegations in paragraph 7.
8. VBNJ denies the allegations in paragraph 8.
9. VBNJ denies the allegations in paragraph 9.
10. VBNJ denies the allegations in paragraph 10.
11. VBNJ denies the allegations in paragraph 11.

GROUND TWO – MARK WAS NEVER IN USE

12. VBNJ denies the allegations in paragraph 12.
13. VBNJ denies the allegations in paragraph 13.
14. VBNJ denies the allegations in paragraph 14.
15. VBNJ denies the allegations in paragraph 15.
16. VBNJ denies the allegations in paragraph 16.
17. VBNJ denies the allegations in paragraph 17.
18. VBNJ denies the allegations in paragraph 18.

AFFIRMATIVE DEFENSES/AMPLIFICATIONS OF DENIALS

By way of further answer, VBNJ alleges and asserts the following defenses in response to the allegations contained in the Counter-Petition. In this regard, VBNJ undertakes the burden of proof only as to those defenses that are deemed affirmative

defenses by law, regardless of how such defenses are denominated in the instant Answer.

FIRST AFFIRMATIVE DEFENSE

As a first separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges Counter-Petitioner fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

As a second separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges VBNJ's mark has been used in commerce for more than five years, and thus bars Counter-Petitioner's Counter-Petition.

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges the Counter-Petition is barred by equitable doctrines of unclean hands, laches, and equitable estoppel.

FOURTH AFFIRMATIVE DEFENSE

As a fourth separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges Counter-Petitioner lacks standing to bring this Counter-Petition.

FIFTH AFFIRMATIVE DEFENSE

As a fifth separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges VBNJ has, is, and at all relevant times alleged in the Counter-Petition, was, using the Challenged Mark in commerce.

SIXTH AFFIRMATIVE DEFENSE

As a sixth separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges VBNJ's specimen is compliant with USPTO requirements.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh separate and affirmative defense to Counter-Petitioner's Counter-Petition, VBNJ alleges VBNJ's specimen is compliant with USPTO requirements.

PETITIONER VBNJ, INC. dba MT. SHASTA BREWING CO.'S ANSWER TO RESPONDENT WEED CELLARS, INC.'S COUNTERPETITION

KROGH & DECKER, LLP

Dated: September 20, 2021

By: /s/ Jason G. Eldred
Jason G. Eldred
Attorneys for VBNJ, Inc. dba Mt.
Shasta Brewing Co.

Case Name: VBNJ, INC. dba MT. SHASTA BREWING CO. V. WEED
CELLARS, INC.,
Court: UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD
App. Serial No.: 88978649
Registration No: 6381999
Opposition No.: 92077648

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing PETITIONER VBNJ, INC. dba MT. SHASTA BREWING CO.'S FIRST AMENDED NOTICE OF OPPOSITION and ANSWER TO COUNTER-PETITION is being electronically filed using the Electronic System for Trademark Trials and Appeals (ESTTA) on the 20th day of September 2021.

/s/ Jason G. Eldred

JASON G. ELDRED

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a true and correct copy of the foregoing PETITIONER VBNJ, INC. dba MT. SHASTA BREWING CO.'S FIRST AMENDED PETITION TO CANCEL WEED REGISTRATION AND ANSWER TO COUNTER-PETITION has been served upon Alexander Butterman and Adam R. Villanueva, counsel for Applicant WEED CELLERS INC. by emails pursuant to 37.C.F.R. § 2.119(b) and TBMP § 113, at abutterman@dbllawyers.com and avillanueva@dbllawyers.com on the 20th day of September 2021.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th day of September 2021, in Sacramento, California.

/s/ Jason G. Eldred

JASON G. ELDRED