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

Proceeding no.	92082333
Party	Defendant Spicy Seasonings, LLC
Correspondence address	HAROLD R BRUNO III ROBINSON WATERS & ODORISIO PC 1099 18TH STREET STE 2600 DENVER, CO 80202 UNITED STATES Primary email: hbruno@rwolaw.com Secondary email(s): nlabor@rwolaw.com 303-297-2600
Submission	Answer
Filer's name	Harold R. Bruno III
Filer's email	hbruno@rwolaw.com, rluna@rwolaw.com, nlabor@rwolaw.com
Signature	/Harold R. Bruno III/
Date	06/23/2023
Attachments	2023-06-23 Answer to Petition for Cancellation.PDF(155003 bytes )



“exclusive right to use [TACO TUESDAY] on or in connection with the goods or services specified in the registration.” Seasonings denies that 15 U.S.C § 1115(a) or anything regarding the Lanham Act or United States trademark law is “not right.”

C. In response to paragraph C of the Petition, Seasonings admits that it has the right to enforce its trademark rights against infringers and those who want to infringe, including Taco Bell. Seasonings denies that enforcing its trademark rights against infringers who seek to profit from the goodwill that Seasonings and its licensees, including Taco John’s International, Inc., have created over the last forty-four years violates any American ideal.

D. In Response to paragraph D of the Petition, Seasonings states that the claim that TACO TUESDAY is a common phrase is a legal conclusion and not an allegation of fact. To the extent such allegation can be deemed an allegation of fact, Seasonings denies such allegation. Seasonings is without knowledge or information sufficient to admit or deny the remaining allegations of paragraph D of the Petition.

E. In response to paragraph E of the Petition, Seasonings denies such allegations.

F. In response to paragraph F of the Petition, Seasonings denies such allegations.

G. In response to paragraph G of the Petition, Seasonings denies such allegations.

H. In response to paragraph H of the Petition, Seasonings denies that Taco Bell would have any right in a cancellation proceeding to obtain damages. Seasonings also denies the remaining allegations of paragraph H of the Petition including any allegation that it is not reasonable and does not have common sense.

I. In response to paragraph I of the Petition, Seasonings denies such allegations.

### **ANSWER TO ALLEGATIONS**

1. In response to the allegations of paragraph 1 of the Petition, Seasonings admits that Taco Bell is a large and recognized brand in the United States. Seasonings is without knowledge or information to admit or deny the remaining allegations of paragraph 1 of the Petition.

2. In response to the allegations of paragraph 2 of the Petition, Seasonings admits that Taco Bell is the owner and licensor of the mark TACO BELL for Mexican-inspired quick service restaurants and that Taco Bell has a large number of company-owned and licensed restaurants in the United States. Seasonings is without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 2 of the Petition.

3. In response to the allegations of paragraph 3 of the Petition, Seasonings admits that Taco Bell sells tacos. Seasonings is without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 3 of the Petition.

4. Seasonings admits the allegations of paragraph 4 of the Petition.

5. Seasonings admits the allegations of paragraph 5 of the Petition.

6. The allegations in paragraph 6 of the Petition are legal conclusions to which no response is necessary. To the extent the allegations in paragraph 6 of the Petition can be deemed allegations of fact, they are denied.

7. Seasonings admits in response to the allegations of paragraph 7 of the Petition that there are more infringers of the mark TACO TUESDAY than Seasonings can send cease and desist letters and/or sue. Seasonings denies the remaining allegations of paragraph 7 of the Petition.

8. In response to the allegations of paragraph 8 of the Petition, Seasonings denies such allegations. In particular, Seasonings denies that there was a familiar concept or custom of consuming tacos on Tuesdays prior to Seasonings and its licensee, Taco John's International, Inc., creating and promoting the mark TACO TUESDAY.

9. In response to the allegations of paragraph 9 of the Petition, Seasonings states that the findings in *In re Monday Night Ventures, LLC*, Ser. No. 88817107 (TTAB, Nov. 28, 2022) speak for themselves including the statement in such decision that it is not TTAB precedent. Seasonings denies any remaining allegations in paragraph 9 of the Petition including any allegations that are inconsistent with the plain meaning of *In re Monday Night Ventures, LLC*, Ser. No. 88817107 (TTAB, Nov. 28, 2022).

10. The allegations in paragraph 10 of the Petition are legal conclusions to which no response is necessary. To the extent the allegation in paragraph 10 of the Petition can be deemed allegations of fact, they are denied.

11. Seasonings is without knowledge or information sufficient to admit or deny the allegations in paragraph 11 of the Petition. To the extent the allegations in paragraph 11 of the Petition can be deemed allegations of fact, they are denied.

12. Seasonings is without knowledge or information sufficient to admit or deny the allegations in paragraph 12 of the Petition. To the extent the allegations in paragraph 12 of the Petition can be deemed allegations of fact, they are denied.

13. Seasonings denies the allegations in paragraph 13 of the Petition.

14. Seasonings denies the allegations in paragraph 14 of the Petition.

15. Seasonings denies the allegations in paragraph 15 of the Petition and notes Petitioner's concession that the Petition's purpose is to compete effectively using Seasonings trademark and not to pursue happiness as alleged in paragraph C.

16. Seasonings denies the allegations in paragraph 16 of the Petition.

17. Seasonings denies the allegations in paragraph 17 of the Petition.

#### **ANSWER TO CLAIM 1**

18. In response to the allegations in paragraph 18 of the Petition, Seasonings incorporates all preceding responses.

19. Seasonings denies the allegations in paragraph 19 of the Petition.

#### **ANSWER TO CLAIM 2**

20. In response to the allegations in paragraph 20 of the Petition, Seasonings incorporates all preceding responses.

21. Seasonings denies the allegations in paragraph 21 of the Petition.

22. Seasonings denies any allegation of the Petition not specifically addressed.

#### **FIRST DEFENSE**

The Petition fails to state a claim upon which relief can be granted. Namely, whether a registered trademark is "fun to say" does not constitute a legal basis to cancel a trademark that has been registered with the USPTO for thirty-four years and was first used by Seasonings and its licensees as early as 1979.

### **FIRST AFFIRMATIVE DEFENSE**

Petitioner and those in active concert with Petitioner are not motivated by the belief “that tacos, just like the joy they bring, belong to everyone on any day.” Instead, Petitioner has brought the Petition in an effort for it to sell more tacos and to cause Seasonings’ licensees to sell less tacos.

### **SECOND AFFIRMATIVE DEFENSE**

Seasonings registration for the mark TACO TUESDAY, does not prohibit Petitioner or anyone from advertising and selling tacos on Tuesday.

### **THIRD AFFIRMATIVE DEFENSE**

Petitioner’s requested relief is barred by the doctrine of unclean hands. In particular, Petitioner’s efforts to create additional infringers with its advertising bars any effort to cancel the mark TACO TUESDAY.

### **FOURTH AFFIRMATIVE DEFENSE**

Petitioner’s requested relief is barred by the doctrine of laches.

WHEREFORE, Seasonings requests that the Petition be denied and that the Board take such other and further action as it deems just and proper in the premises.

Respectfully submitted this 23rd day of June, 2023.

ROBINSON WATERS & O’DORISIO, P.C.

/s/ Harold R. Bruno III

Harold R. Bruno III, Esq.

Nicholas L. Labor, Esq.

1099 18<sup>th</sup> Street, Suite 2600

Denver, Colorado 80202

Phone: 303.297.2600

Facsimile: 303.297.2750

E-mail: hbruno@rwolaw.com

*Attorney for Registrant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of June, 2023, I filed the foregoing Answer to Petition for Cancellation with the Electronic System for Trademark Trials and Appeals and served it on the following via email:

Stephen P. Meleen, Esq.  
Anna C. Kuhn, Esq.  
Alexandra H. Bistline, Esq.  
David E. Armendariz  
PIRKEY BARBER PLLC  
1801 East 6th St., Suite 300  
Austin, TX 78702  
(512) 322-5200  
*Attorneys for Petitioner*

/s/ Raquel Luna  
Raquel Luna, Paralegal