

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION**

**MCCORMICK & COMPANY, INC.
24 Schilling Road, Suite 1
Hunt Valley, MD 21031,**

Case No. 1:18-cv-03799-RDB

Plaintiff,

v.

**PRIMAL PALATE, LLC
1300 Freeport Road
Pittsburgh, PA 15238,**

Defendant.

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Defendant Primal Palate, LLC (“Defendant”), by and through its counsel, hereby submits the following Answer and Affirmative Defenses in response to the complaint of Plaintiff McCormick & Company, Incorporated, (“Plaintiff”).

ANSWER

1. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.
2. Admitted.
3. Admitted.

4. Defendant admits that the Court has personal jurisdiction over Defendant and that Defendant has sold products in this judicial district. Defendant denies the rest of this allegation as untrue.

5. Defendant admits that venue is proper in this judicial district but denies as untrue that Defendant's transactions in this district constitute a substantial part of the events giving rise to Plaintiff's complaint and that Plaintiff has suffered harm in this judicial district because of Primal Palate.

6. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

7. Defendant denies as untrue that Old Bay seasoning is distinctive. As to the remainder of the allegation, Defendant lacks sufficient information to admit or deny them and therefore denies them.

8. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

9. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

10. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

11. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

12. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

13. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

14. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

15. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

16. Admitted.

17. Admitted.

18. Defendant assumes that McCormick's use of "Opposer" is a mistake and will treat that word as meaning "Plaintiff." Admitted otherwise.

19. Defendant assumes that McCormick's use of "Opposer" is a mistake and will treat that word as meaning "Plaintiff." Admitted otherwise.

20. Defendant assumes that McCormick's use of "Opposer" is a mistake and will treat that word as meaning "McCormick." Admitted otherwise.

21. Defendant assumes that McCormick's use of "Opposer" is a mistake and will treat that word as meaning "McCormick." Admitted otherwise.

22. Defendant assumes that McCormick's use of "Opposer" is a mistake and will treat that word as meaning "McCormick." Admitted otherwise.

23. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

24. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

25. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

26. Defendant cannot access the relevant article to verify the allegations of this paragraph, and therefore denies them.

27. Denied.

28. Admitted.

29. Denied.

30. Admitted.

31. Denied.

32. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

33. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

34. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

35. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

36. Defendants denies as untrue the allegations in this paragraph.

37. Defendant admits that it launched its New Bae Seasoning in October 2017. As for the remainder of this allegation, Defendant admits only that it wrote this in a blog:

New Bae is literally our New Bae. WE didn't intend to set up a terrible pun with this blend, but it's really become the sweetheart blend in our kitchen. We LOOOVE it on potatoes (like fries), it's also the absolute best on crab legs. It goes great on chicken, and also popcorn (if you partake in corn from time to time). The blend is salty, and packs quite a kick due to the ancho chili and cayenne (and black pepper too!) You're really going to like this blend if you like heat.

38. Defendant admits only that it has used the phrase "out with the old, in with the new" in connection with its New Bae Seasoning and denies as untrue the remainder of this allegation.

39. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

40. Defendant admits only that its New Bae Seasoning is sold on Amazon.com. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remainder of this allegation, which has the effect of a denial.

41. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

42. As for the allegations about consumer association, Primal Palate lacks knowledge or information sufficient to form a belief about the truth of the remainder of this allegation, which has the effect of a denial. As for the allegation of dilution, denied as untrue.

43. Defendants denies this paragraph as untrue.

44. Admitted.

45. Defendants denies this paragraph as untrue.

46. Admitted.

COUNT I
Federal Trademark Dilution (15 U.S.C. §1125(c))

47. No response needed.

48. Defendants denies this paragraph as untrue.

49. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

50. Defendant denies this paragraph as untrue.

51. Defendant denies this paragraph as untrue.

52. Defendant denies this paragraph as untrue.

53. Defendant denies this paragraph as untrue.

COUNT II
Federal Trademark Infringement (15 U.S.C. §1114)

54. No response needed.

55. Defendant denies this paragraph as untrue.

56. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

57. Defendant denies this paragraph as untrue.

58. Defendant denies this paragraph as untrue.

59. Defendants denies this paragraph as untrue.

60. Defendants denies this paragraph as untrue.

COUNT III
False Designation of Origin (15 U.S.C. §1125(a))

61. No response needed.

62. Defendant denies this paragraph as untrue.

63. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

64. Defendant denies this paragraph as untrue.

65. Defendant denies this paragraph as untrue.

66. Defendant denies this paragraph as untrue.

67. Defendant denies this paragraph as untrue.

COUNT IV
Refusal of U.S. Application Serial No. 87/682,012
(15 U.S.C. §1119)

68. No response needed.

69. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and therefore denies them.

70. Defendant admits only that McCormick has not authorized Primal Palate to use, apply, or register any mark but denies as untrue that New Bae Seasoning dilutes or is confusingly similar to Old Bay.

71. Defendant denies this paragraph as untrue.

72. Defendant denies this paragraph as untrue.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses to Plaintiff's complaint:

1. Plaintiff's claims are barred, in whole or in part, by the doctrines of fair use, nominative fair use, parody, comparative advertising, and/or descriptive use.

2. Defendant reserves the right to supplement or amend these affirmative defenses based upon the course of discovery and proceedings in this action.

JURY DEMAND

Defendant demands a trial by jury on all issues so triable.

Dated: January 2, 2019

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*Attorneys for Defendant
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CERTIFICATE OF SERVICE

I certify that on January 2, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

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