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

Proceeding	91203884
Party	Plaintiff Ennis, Inc.
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Attachments	Answer to 2nd Amended Petition.pdf ( 12 pages )(35200 bytes )

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

In Re: Application Serial No. 85/324,443  
For the Mark: COLOR WARS  
Filed: May 18, 2011  
Published in the Official Gazette: January 17, 2012

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Ennis, Inc.	)	
	)	
	)	
Opposer	)	
	)	
	)	Opposition No. 91203884
v.	)	
	)	
	)	
Joel L. Beling d/b/a Supa Characters Pty Ltd	)	
	)	
Applicant	)	
	)	

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Joel L. Beling d/b/a Supa Characters Pty Ltd,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92055374
	)	
Ennis, Inc.	)	
	)	
	)	Registration No. 3,372,884
	)	Mark: COLORWORX
Registrant.	)	
	)	

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**ANSWER TO SECOND AMENDED PETITION TO CANCEL**

Registrant, ENNIS, INC., by and through its undersigned counsel, hereby responds to the Second Amended Petition to Cancel subject to, and without waiving, its Motion to Dismiss Petitioner's Second Amended Petition to Cancel, as follows:

**I.**

**PRELIMINARY STATEMENT**

Any factual allegation admitted to herein is admitted only as to the specific facts in question and not as to any purported conclusions, characterizations, implications or speculations drawn therefrom, wherever stated in Petitioner's Second Amended Petition to Cancel. Further, the denial of any factual allegation herein may not be construed as an admission of the negative of such allegation.

Registrant denies each and every allegation contained in Petitioner's Second Amended Petition to Cancel, except as specifically admitted, qualified or otherwise responded to herein. Registrant's Answer below is organized to track the structure of Petitioner's Second Amended Petition to Cancel for purposes of convenience and ease of reference only. Registrant specifically denies any and all allegations contained in headings or unnumbered paragraphs in Petitioner's Second Amended Petition to Cancel, if any.

**II.**

**ORIGINAL ANSWER**

1. With regard to the introductory statements and allegations in paragraphs 1-4, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Petitioner's citizenship, business and education credentials, or other information and, therefore, denies those allegations. Registrant admits that Petitioner has filed

the instant Petitioner's Second Amended Petition to Cancel, admits that Registrant's place of business is stated correctly, and otherwise denies the remaining allegations in paragraphs 1-4.

2. With regard to the the allegations contained in paragraphs 5-8 of Petitioner's Second Amended Petition to Cancel, Registrant admits that it filed an Opposition against Petitioner relating to the same marks at issue herein, and otherwise denies the remaining allegations in the paragraphs 5-8.

### **ANSWER TO COUNT I**

3. To the extent a response is required to the allegations in paragraph 9, Registrant incorporates all previous answers as if fully set forth herein.

4. Registrant denies the allegations contained in paragraphs 10-22 of Petitioner's Second Amended Petition to Cancel.

### **ANSWER TO COUNT II**

5. To the extent a response is required to the allegations in paragraph 23, Registrant incorporates all previous answers as if fully set forth herein.

6. Registrant denies the allegations contained in paragraphs 24-34 of the Second Amended Petition to Cancel.

### **ANSWER TO COUNT III**

7. To the extent a response is required to the allegations in paragraph 35, Registrant incorporates all previous answers as if fully set forth herein.

8. Registrant denies the allegations contained in paragraphs 36-43 of Petitioner's Second Amended Petition to Cancel.

## ANSWER TO COUNT IV

9. To the extent a response is required to the allegations in paragraph 44, Registrant incorporates all previous answers as if fully set forth herein.

10. Registrant denies the allegations contained in paragraphs 45-48 of Petitioner's Second Amended Petition to Cancel.

11. Registrant admits the allegations in paragraphs 49-52 of Petitioner's Second Amended Petition to Cancel.

12. Registrant denies the allegations contained in paragraphs 53-68 of Petitioner's Second Amended Petition to Cancel.

13. With regard to the allegations contained in paragraphs 69-70 of Petitioner's Second Amended Petition to Cancel, Registrant admits only that Registrant has used the ColorWorx brand and design in its business operations. Registrant denies all other allegations contained in paragraphs 69-70 of Petitioner's Second Amended Petition to Cancel.

14. With regard to the allegations contained in paragraphs 71-72 of Petitioner's Second Amended Petition to Cancel, Registrant admits only that Registrant has used the slogan "Uniqueness is the mark of success" in its business operations. Registrant denies all other allegations contained in paragraphs 71-72 of Petitioner's Second Amended Petition to Cancel.

15. With regard to the allegations contained in paragraph 73 of Petitioner's Second Amended Petition to Cancel, Registrant admits only that Registrant has used the ColorWorx brand and design in its business operations. Registrant denies all other allegations contained in paragraphs 73 of Petitioner's Second Amended Petition to Cancel.

16. Registrant denies the allegations contained in paragraphs 74-81 of Petitioner's Second Amended Petition to Cancel.

17. Registrant admits the allegations contained in paragraph 82 of Petitioner's Second Amended Petition to Cancel.

18. Registrant denies the allegations contained in paragraphs 83-88 of Petitioner's Second Amended Petition to Cancel.

19. Registrant admits the allegations contained in paragraph 89 of Petitioner's Second Amended Petition to Cancel.

20. Registrant denies the allegations contained in paragraphs 90-95 of Petitioner's Second Amended Petition to Cancel.

21. Registrant admits the allegations contained in paragraph 96 of Petitioner's Second Amended Petition to Cancel.

22. Registrant denies the allegations contained in paragraphs 97-102 of Petitioner's Second Amended Petition to Cancel.

23. Registrant admits the allegations contained in paragraph 103 of Petitioner's Second Amended Petition to Cancel.

24. Registrant denies the allegations contained in paragraphs 104-109 of Petitioner's Second Amended Petition to Cancel.

25. Registrant admits the allegations contained in paragraph 110 of Petitioner's Second Amended Petition to Cancel.

26. Registrant denies the allegations contained in paragraphs 111-116 of Petitioner's Second Amended Petition to Cancel.

27. Registrant admits the allegations contained in paragraph 117 of Petitioner's Second Amended Petition to Cancel.

28. Registrant denies the allegations contained in paragraphs 118-217 of Petitioner's Second Amended Petition to Cancel.

29. To the extent a response is required to the allegations in paragraph 218, Registrant incorporates all previous answers as if fully set forth herein

30. Registrant denies the allegations contained in paragraphs 219-220 of Petitioner's Second Amended Petition to Cancel.

31. To the extent a response is required to the allegations in paragraph 221, Registrant incorporates all previous answers as if fully set forth herein.

32. Registrant denies the allegations contained in paragraphs 222-223 of Petitioner's Second Amended Petition to Cancel.

33. To the extent a response is required to the allegations in paragraph 224, Registrant incorporates all previous answers as if fully set forth herein.

34. Registrant denies the allegations contained in paragraphs 225-226 of Petitioner's Second Amended Petition to Cancel.

35. To the extent a response is required to the allegations in paragraph 227, Registrant incorporates all previous answers as if fully set forth herein.

36. Registrant denies the allegations contained in paragraphs 228-229 of Petitioner's Second Amended Petition to Cancel.

37. To the extent a response is required to the allegations in paragraph 230, Registrant incorporates all previous answers as if fully set forth herein.

38. Registrant denies the allegations contained in paragraph 231-235 of Petitioner's Second Amended Petition to Cancel.

39. Registrant admits the allegations in paragraphs 236 of Petitioner's Second Amended Petition to Cancel.

40. Registrant denies the allegations contained in paragraph 237 of Petitioner's Second Amended Petition to Cancel.

41. Registrant admits the allegations in paragraphs 238-239 of Petitioner's Second Amended Petition to Cancel.

42. Registrant denies the allegations contained in paragraph 240 of Petitioner's Second Amended Petition to Cancel.

43. Registrant admits the allegations in paragraph 241 of Petitioner's Second Amended Petition to Cancel.

44. Registrant denies the allegations contained in paragraphs 242-243 of Petitioner's Second Amended Petition to Cancel.

45. To the extent a response is required to the allegations in paragraph 244, Registrant incorporates all previous answers as if fully set forth herein.

46. Registrant denies the allegations contained in paragraph 245 of Petitioner's Second Amended Petition to Cancel.

47. To the extent a response is required to the allegations in paragraph 246, Registrant incorporates all previous answers as if fully set forth herein.

48. Registrant denies the allegations contained in paragraph 247 of Petitioner's Second Amended Petition to Cancel.

49. To the extent a response is required to the allegations in paragraph 248, Registrant incorporates all previous answers as if fully set forth herein.

50. Registrant denies the allegations contained in paragraph 249 of Petitioner's Second Amended Petition to Cancel.

51. Registrant denies the allegations contained in paragraph 250 of Petitioner's Second Amended Petition to Cancel.

52. Registrant admits the allegations in paragraphs 251-252 of Petitioner's Second Amended Petition to Cancel.

53. Registrant denies the allegations in paragraphs 253-258 of Petitioner's Second Amended Petition to Cancel.

54. Registrant admits the allegations in paragraphs 259-260 of Petitioner's Second Amended Petition to Cancel.

55. Registrant denies the allegations in paragraphs 261-274 of Petitioner's Second Amended Petition to Cancel.

56. Registrant admits the allegations in paragraphs 275-276 of Petitioner's Second Amended Petition to Cancel.

57. Registrant denies the allegations in paragraphs 277-290 of Petitioner's Second Amended Petition to Cancel.

58. Registrant admits the allegations in paragraphs 291-292 of Petitioner's Second Amended Petition to Cancel.

59. Registrant denies the allegations in paragraphs 293-314 of Petitioner's Second Amended Petition to Cancel.

60. Registrant admits the allegations in paragraph 315 of Petitioner's Second Amended Petition to Cancel.

61. Registrant denies the allegations in paragraphs 316-319 of Petitioner's Second Amended Petition to Cancel.

62. Registrant admits the allegations in paragraph 320 of Petitioner's Second Amended Petition to Cancel.

63. Registrant denies the allegations in paragraphs 321 of Petitioner's Second Amended Petition to Cancel.

64. Registrant admits the allegations in paragraphs 322 of Petitioner's Second Amended Petition to Cancel

65. Registrant denies the allegations in paragraph 323-324 of Petitioner's Second Amended Petition to Cancel.

66. Registrant admits the allegations in paragraph 325 of Petitioner's Second Amended Petition to Cancel.

67. Registrant denies the allegations in paragraphs 326-329 of Petitioner's Second Amended Petition to Cancel.

68. Registrant admits the allegations in paragraph 330 of Petitioner's Second Amended Petition to Cancel.

69. Registrant denies the allegations in paragraphs 331 of Petitioner's Second Amended Petition to Cancel.

70. Registrant admits the allegations in paragraph 332 of Petitioner's Second Amended Petition to Cancel.

71. Registrant denies the allegations in paragraphs 333-344 of Petitioner's Second Amended Petition to Cancel.

72. Registrant admits the allegations in paragraph 345 of Petitioner's Second Amended Petition to Cancel.

73. Registrant denies the allegations in paragraphs 346-353 of Petitioner's Second Amended Petition to Cancel.

74. To the extent a response is required to the allegations in paragraph 354, Registrant incorporates all previous answers as if fully set forth herein.

75. Registrant denies the allegations in paragraph 355 of Petitioner's Second Amended Petition to Cancel.

76. To the extent a response is required to the allegations in paragraph 356, Registrant incorporates all previous answers as if fully set forth herein.

77. Registrant denies the allegations in paragraph 357 of Petitioner's Second Amended Petition to Cancel.

78. To the extent a response is required to the allegations in paragraph 358, Registrant incorporates all previous answers as if fully set forth herein.

79. Registrant denies the allegations in paragraph 359-366 of Petitioner's Second Amended Petition to Cancel.

80. To the extent a response is required to the allegations in paragraph 367, Registrant incorporates all previous answers as if fully set forth herein.

81. Registrant denies the allegations in paragraphs 368-370 of Petitioner's Second Amended Petition to Cancel.

### **ANSWER TO PRAYER**

82. To the extent that a response is required, Registrant denies the allegations contained in Petitioner's prayer of the Second Amended Petition to Cancel.

### **III.**

#### **AFFIRMATIVE DEFENSES**

83. Petitioner's Second Amended Petition to Cancel fails to state any claim upon which relief may be granted.

84. Petitioner's Second Amended Petition to Cancel fails as a matter of law because his claim for cancellation was compulsory and should have been brought as a counterclaim in the Opposition No. 91203884. 37 C.F.R. § 2.114 (b)(2)(i).

85. Petitioner has not and will not be damaged by the mark COLORWORX and therefore lacks standing to petition for the cancellation of the registration at issue in this action.

86. Petitioner is barred from seeking cancellation of Registrant's mark COLORWORX under the doctrines of laches, estoppel and waiver.

87. Through Registrant's long, substantial and widespread use, advertising and promotion in support of its mark COLORWORX, said mark has acquired a strong secondary meaning identifying the services provided by Registrant.

88. Petitioner has failed to state specifically and cannot state specifically any actual damages by virtue of Registrant's continued registration of its mark COLORWORX.

89. Petitioner has unclean hands and proceeds in bad faith because Petitioner is attempting to appropriate the goodwill of Registrant's mark COLORWORX.

### **IV.**

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Registrant prays that the Second Amended Petition to Cancel be dismissed with prejudice and that Registrant be awarded all other relief to which it is entitled, both at law and in equity.

Dated: August 27, 2012

Respectfully submitted,

CHALKER FLORES, LLP

By: /s/Scott A. Meyer

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**ATTORNEYS FOR REGISTRANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing ANSWER TO SECOND AMENDED PETITION TO CANCEL was served on all counsel of record, this the 27<sup>th</sup> of August, 2012, by sending the same via electronically through the Electronic System for Trademark Trials and Appeal (“ESTTA”) and electronic mail service.

/s/Scott A. Meyer

Scott A. Meyer