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

Proceeding	91214086
Party	Defendant Philip Melnick
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Submission	Answer
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Date	07/30/2014
Attachments	myst answer.pdf(90103 bytes)

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

Starbuzz Tobacco, Inc.

Petitioner,

vs.

Philip Melnick

Respondent.

Opposition No. 91214086

**PHILIP MELNICK ANSWER TO PETITION
TO CANCEL BY STARBUZZ TOBACCO INC.**

Respondent Philip Melnick hereby answers and alleges to the Petition to Cancel by Starbuzz Tobacco Inc. as follows:

1. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1 of the Petition to Cancel and denies the allegations contained therein on that basis.
2. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2 of the Petition to Cancel and denies the allegations contained therein on that basis.
3. Respondent admits the allegations in paragraph 3 of the Petition to Cancel.
4. Respondent denies the allegations in paragraph 4 of the Petition to Cancel: Attorney Thomas Wilentz no longer represents the petitioner.
5. Respondent admits the allegations in paragraph 5 of the Petition to Cancel.
6. Respondent admits the allegations in paragraph 6 of the Petition to Cancel.
7. Respondent admits the allegations in paragraph 7 of the Petition to Cancel.
8. Respondent admits the allegations in paragraph 8 of the Petition to Cancel.
9. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations

of paragraph 9 of the Petition to Cancel and denies the allegations contained therein on that basis.

10. Respondent admits the allegations in paragraph 10 of the Petition to Cancel.

11. Respondent denies the allegations in paragraph 11 of the Petition to Cancel.

12. Respondent admits the allegations in paragraph 12 of the Petition to Cancel.

13. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 13 of the Petition to Cancel and denies the allegations contained therein on that basis.

14. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 14 of the Petition to Cancel and denies the allegations contained therein on that basis.

15. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 15 of the Petition to Cancel and denies the allegations contained therein on that basis.

16. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 16 of the Petition to Cancel and denies the allegations contained therein on that basis.

17. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17 of the Petition to Cancel and denies the allegations contained therein on that basis.

18. Respondent denies the allegations in paragraph 18 of the Petition to Cancel.

19. Respondent denies the allegations in paragraph 19 of the Petition to Cancel.

20. Respondent admits and denies in part the allegations in paragraph 20 of the Petition to Cancel. While Respondent admits that Petitioner has no control over Respondent's goods, Respondent denies that the quality of Respondent's goods would reflect adversely upon or in any way damage Petitioner.

21. Respondent denies the allegations in paragraph 21 of the Petition to Cancel.

22. Respondent denies the allegations in paragraph 22 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

Applicant avers and asserts affirmative defenses as follows:

FIRST AFFIRMATIVE DEFENSE

(Trademark Misuse)

Petitioner's claims are barred in whole or in part, because Petitioner is misusing its trademarks and the trademark registration process to prevent the legitimate use and registration of other trademarks.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

Petitioner's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Fraud upon the USPTO)

Petitioner's claims are barred, in whole or in part, since it fraudulently obtained its federal trademark registrations.

FOURTH AFFIRMATIVE DEFENSE

(No Injury)

Petitioner's claims are barred since it is not likely to suffer injury, nor is there a likelihood of injury.

FIFTH AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

Petitioner's claims are barred since consumers are not likely to be confused as to the source of Petitioner's and Respondent's products.

SIXTH AFFIRMATIVE DEFENSE

(Third Party Use)

Petitioner's claims are barred since third parties have used the term "mist" for tobacco products prior to Petitioner's use of its mark.

SEVENTH AFFIRMATIVE DEFENSE

(Reservation)

Respondent currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Respondent reserves the right to assert additional affirmative defense in the event that the discovery indicates it would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully requests that the Petitioner's Opposition be dismissed with prejudice and the Board grant such further relief as the Board may deem just.

Respectfully Submitted,

Date: July 30, 2014

/Philip Melnick/

Philip Melnick

CERTIFICATE OF SERVICE

I, Philip Melnick, herby certify that on this 30th day of July, 2014 I mailed a copy via first-class mail of this Answer to Petition to Cancel to the following address:

MARTIN JERISAT

STARBUZZ TOBACCO INC

10871 FORBES AVENUE

GARDEN GROVE CA , 92843

And via electronic mail to martin@starbuzztobacco.com.

Date: July 30, 2014

/Philip Melnick/

Philip Melnick