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Filing date: **05/24/2016**

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

Proceeding	91227373
Party	Defendant Lin's Waha International Corp
Correspondence Address	JOEL KARNI SCHMIDT Cowan Liebowitz & Latman P C 114 West 47th Street New York, NY 10036-6710 Trademark@cll.com;jhe@ccl.com;ame@ccl.c
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Signature	/Eric J. Shimanoff/
Date	05/24/2016
Attachments	2082088_1.pdf(73086 bytes)

Registrations Subject to the filing

Registration No	1999432	Registration date	09/10/1996
Registrant	TINGYI (CAYMAN ISLANDS) HOLDING CORP. P.O. BOX 309 Ugland House Grand Cayman KY1-1104, CAYMAN ISLANDS		

Goods/Services Subject to the filing

Class 030. First Use: 1992/06/20 First Use In Commerce: 1994/08/27
All goods and services in the class are requested, namely: instant noodles

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Registration No	2265233	Registration date	07/27/1999
Registrant	TINGYI (CAYMAN ISLANDS) HOLDING CORP. Genesis Building, Fifth Floor George Town, Grand Cayman, CAYMAN ISLANDS		

Goods/Services Subject to the filing

Class 030. First Use: 1996/07/00 First Use In Commerce: 1996/12/00
All goods and services in the class are requested, namely: [rice porridge,] instant rice porridge consisting primarily of rice and with eight ingredients * , * [;] [glutinous rice porridge, instant porridge, * longan-oat *][logan-oat] [porridge,] glutinous rice porridge with * longan-peanut *[logan-peanut] , biscuits, cookies, egg roll, cakes, [pastries;] crackers, rice crackers, [pea crackers;] noodles; instant noodles

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
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Registration No	3409568	Registration date	04/08/2008
Registrant	Tingyi (Cayman Islands) Holding Corp. Genesis Building, Fifth Floor George Town, Grand Cayman, CAYMAN ISLANDS		

Goods/Services Subject to the filing

Class 030. First Use: 1992/05/00 First Use In Commerce: 1996/06/00 All goods and services in the class are requested, namely: tea, tea-based beverages, ice tea, tea beverages containing milk, chocolate, chocolate-based beverages, cocoa-based beverages, cocoa candy, coffee, coffee-based beverages
Class 032. First Use: 1996/04/00 First Use In Commerce: 2001/06/00 All goods and services in the class are requested, namely: fruit juices, fruit nectars, grape mistbeing a fruit juice-based beverage, isotonic beverages, mineral water, non-alcoholic fruit nectars, non-alcoholic fruitextracts used in the preparation of beverages, non-alcoholic fruit juice beverages, tomato juice for beverage, flavoredwaters, whey beverages, syrup of plum for making beverages

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Registration No	3409569	Registration date	04/08/2008
Registrant	Tingyi (Cayman Islands) Holding Corp. Genesis Building, Fifth Floor George Town, Grand Cayman, CAYMAN ISLANDS		

Goods/Services Subject to the filing

Class 030. First Use: 1996/06/00 First Use In Commerce: 1996/06/00 All goods and services in the class are requested, namely: tea, tea-based beverages, ice tea, tea beverages containing milk, chocolate, chocolate-based beverages, cocoa-based beverages, cocoa candy, coffee, coffee-based beverages
Class 032. First Use: 1998/10/00 First Use In Commerce: 1998/10/00 All goods and services in the class are requested, namely: fruit juices, fruit nectars, grape mistbeing a fruit juice-based beverage, isotonic beverages, mineral water, non-alcoholic fruit nectars, non-alcoholic fruitextracts used in the preparation of beverages, non-alcoholic fruit juice beverages, tomato juice for beverage, flavoredwaters, whey beverages, syrup of plum for making beverages

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Registration No	2138029	Registration date	02/17/1998
Registrant	TINGYI (CAYMAN ISLANDS) HOLDING CORP. NO. 15, 3RD AVENUE TIANJIN, 300457 CHINA		

Goods/Services Subject to the filing

Class 030. First Use: 1996/07/00 First Use In Commerce: 1996/07/00 All goods and services in the class are requested, namely: biscuits, cookies, pastries, rice crackers, noodles and instant noodles
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
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Registration No	1983965	Registration date	07/02/1996
Registrant	TINGYI (CAYMAN ISLANDS) HOLDING CORP. P.O. BOX 309 Ugland House Grand Cayman KY1-1104, CAYMAN ISLANDS		

Goods/Services Subject to the filing

Class 030. First Use: 1993/03/30 First Use In Commerce: 1994/08/27 All goods and services in the class are requested, namely: instant noodles
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86859139
Filed: December 28, 2015
For Mark: KANG SHI FU & Design
Published in the Official Gazette: March 22, 2016

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: Tingyi (Cayman Islands) Holding Corp. :
: :
: Opposer/Counterclaim-Respondent, : Opposition No.: 91227373
: :
: v. :
: :
: Lin's Waha International Corp, :
: :
: Applicant/Counterclaimant. :
: :
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ANSWER AND COUNTERCLAIMS

ANSWER

Applicant Lin's Waha International Corp ("Lin's Waha"), by and through its undersigned counsel, as and for its Answer to the above-referenced Notice of Opposition filed by Opposer Tingyi (Cayman Islands) Holding Corp. ("THC"), alleges as follows:

As to the first unnumbered paragraph in the Notice of Opposition, Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein, and therefore denies the same, and further states that the Board should dismiss the instant Opposition against Lin's Waha's Application Serial No. 86859139.

1. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Notice of Opposition, and therefore denies the same.

2. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Notice of Opposition, and therefore denies the same.

3. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Notice of Opposition, and therefore denies the same, and refers to the cited registrations for a complete and accurate statement of their contents.

8. Lin's Waha admits the allegations set forth in paragraph 8 of the Notice of Opposition.

9. Lin's Waha denies the allegations set forth in paragraph 9 of the Notice of Opposition, and refers to the cited application for a complete and accurate statement of its contents.

10. Lin's Waha denies the allegations set forth in paragraph 10 of the Notice of Opposition, except admits that Lin's Waha is a New York corporation, states that Lin's Waha has an address of 229 Robbins Lane, Syosset, NY 11791, and refers to the cited USPTO records for a complete and accurate statement of their contents.

11. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Notice of Opposition, and therefore denies the same.

12. Lin's Waha denies the allegations set forth in paragraph 12 of the Notice of Opposition, and refers to the cited application and registrations for complete and accurate statements of their contents.

13. Lin's Waha denies the allegations set forth in paragraph 13 of the Notice of Opposition, and refers to the cited application and registrations for complete and accurate statements of their contents.

14. Lin's Waha denies the allegations set forth in paragraph 14 of the Notice of Opposition, and refers to the cited application and registrations for complete and accurate statements of their contents.

15. Lin's Waha denies the allegations set forth in paragraph 15 of the Notice of Opposition, and refers to the cited application and registrations for complete and accurate statements of their contents.

16. Lin's Waha denies the allegations set forth in paragraph 16 of the Notice of Opposition, and refers to the cited application and registrations for complete and accurate statements of their contents.

17. Lin's Waha denies the allegations set forth in paragraph 17 of the Notice of Opposition.

18. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Notice of Opposition, and therefore denies the same.

19. Lin's Waha repeats and re-alleges the responses set forth in paragraphs 1-19 above as though fully set forth herein.

20. Lin's Waha is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Notice of Opposition, and therefore denies the same.

21. Lin's Waha denies the allegations set forth in paragraph 21 of the Notice of Opposition.

22. Lin's Waha denies the allegations set forth in paragraph 22 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

23. The Notice of Opposition is barred by the doctrines of estoppel and unclean hands.

SECOND AFFIRMATIVE DEFENSE

24. There is no likelihood of confusion, mistake or deception within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

THIRD AFFIRMATIVE DEFENSE

25. There is no likelihood of dilution within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), including because THC's marks asserted in the Notice of Opposition are not famous.

FOURTH AFFIRMATIVE DEFENSE

26. As set forth in the following counterclaim, THC has abandoned its marks asserted in the Notice of Opposition in the United States.

FIFTH AFFIRMATIVE DEFENSE

27. THC lacks standing to assert the claims in the Notice of Opposition because, inter alia, THC has abandoned its marks asserted in the Notice of Opposition in the United States.

COUNTERCLAIMS

Applicant/Counterclaimant Lin's Waha International Corp ("Lin's Waha"), a New York Corporation with an address of 229 Robbins Lane, Syosset, NY 11791, by and through its undersigned counsel, petitions to cancel Registration Nos. 1983965, 1999432, 2265233, 3409568, 3409569 and 2138029, which are listed as owned by Tingyi (Cayman Islands) Holding Corp. ("THC"), a Cayman Islands corporation with an address of Genesis Building, Fifth Floor, P.O. Box 448, George Town, Grand Cayman, KY1-1106, Cayman Islands. As grounds for cancellation, it is alleged that:

1. Lin's Waha is the owner of Registration No. 4561415, issued on July 1, 2014, for the mark KANG SHI FU & Design for "Tea-based beverages" in International Class 30 (the "415 Registration").

2. Lin's Waha is the owner of Registration No. 4561526, issued on July 1, 2014, for the mark KANG SHI FU & Design for "Instant or pre-cooked soup; Instant or pre-cooked stew"

in International Class 29 and “Instant chinese noodles; Instant noodles” in International Class 30 (the “526 Registration” and together with the ‘415 Registration, “Lin’s Waha’s Registrations”).

3. On December 28, 2015, Lin’s Waha filed Application Serial No. 86859139 for the mark KANG SHI FU & Design for “Cakes; Cookies; Pastries” in International Class 30 (“Lin’s Waha’s Application”) on an intent to use basis under Section 1(b) of the Trademark Act.

4. THC is listed as the owner of Registration No. 1983965, issued on July 2, 1996,



for the mark for “instant noodles” in International Class 30 (the “965 Registration”).

5. THC is listed as the owner of Registration No. 1999432, issued on September 10,



1996, for the mark for “instant noodles” in International Class 30 (the “432 Registration”).

6. THC is listed as the owner of Registration No. 2265233, issued on July 27, 1999,



for the mark for “[rice porridge,] instant rice porridge consisting primarily of rice and with eight ingredients * , * [;] [glutinous rice porridge, instant porridge, * longan-oat *][logan-oat] [porridge,] glutinous rice porridge with * longan-peanut * [logan-peanut] , biscuits, cookies, egg roll, cakes, [pastries,] crackers, rice crackers, [pea crackers,] noodles; instant noodles” in International Class 30 (the “233 Registration”).

7. THC is listed as the owner of Registration No. 3409568, issued on April 8, 2008,



for the mark  for “tea, tea-based beverages, ice tea, tea beverages containing milk, chocolate, chocolate-based beverages, cocoa-based beverages, cocoa candy, coffee, coffee-based beverages” in International Class 30 and “fruit juices, fruit nectars, grape mist being a fruit juice-based beverage, isotonic beverages, mineral water, non-alcoholic fruit nectars, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, tomato juice for beverage, flavored waters, whey beverages, syrup of plum for making beverages” in International Class 32 (the “568 Registration”).

8. THC is listed as the owner of Registration No. 3409569, issued on April 8, 2008, for the mark MR. KON & Design for “tea, tea-based beverages, ice tea, tea beverages containing milk, chocolate, chocolate-based beverages, cocoa-based beverages, cocoa candy, coffee, coffee-based beverages” in International Class 30 and “fruit juices, fruit nectars, grape mist being a fruit juice-based beverage, isotonic beverages, mineral water, non-alcoholic fruit nectars, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, tomato juice for beverage, flavored waters, whey beverages, syrup of plum for making beverages” in International Class 32 (the “569 Registration”).

9. THC is listed as the owner of Registration No. 2138029, issued on February 17, 1998, for the mark MR. KON & Design for “biscuits, cookies, pastries, rice crackers, noodles and instant noodles” in International Class 30 (the “029 Registration” and together with the ‘965 Registration, the ‘432 Registration, the ‘233 Registration, the ‘568 Registration and the ‘569 Registration, “THC’s Registrations”).

10. On March 25, 2016, THC commenced Cancellation No. 92063414, alleging that Lin's Waha's Registrations should be cancelled based upon claims of Section 2(d) likelihood of with and Section 43(a) likelihood of dilution of THC's Registrations and the marks covered thereby.

11. On April 14, 2016, THC commenced Opposition No. 91227373, alleging that Lin's Waha's Application should be refused registration based upon claims of Section 2(d) likelihood of with and Section 43(a) likelihood of dilution of THC's Registrations and the marks covered thereby.

12. On April 21, 2016, in Cancellation No. 92063414, Lin's Waha filed an answer and counterclaims seeking to cancel THC's Registrations based, inter alia, on abandonment and unlawful use.

13. Upon information and belief, THC does not currently use in United States commerce the marks covered by THC's Registrations in connection with the goods listed in such registrations.

14. Upon information and belief, THC does not currently lawfully use in United States commerce the marks covered by THC's Registrations in connection with the goods listed in such registrations.

15. Upon information and belief, THC has not used in United States commerce for at least the past three consecutive years the marks covered by THC's Registrations in connection with the goods listed in such registrations.

16. Upon information and belief, THC has not lawfully used in United States commerce for at least the past three consecutive years the marks covered by THC's Registrations in connection with the goods listed in such registrations.

17. Upon information and belief, THC manufactures in China all of the goods sold under the marks covered by THC's Registrations and THC is not permitted by the Chinese government lawfully to export such goods to the United States.

18. Upon information and belief, none of the goods manufactured and sold by THC under the marks covered by THC's Registrations comply with U.S. labeling requirements and it would be unlawful to import and sell such goods in the United States.

19. Upon information and belief, THC does not intend to resume use of the marks covered by THC's Registrations in connection with the goods listed in such registrations in United States commerce.

20. Upon information and belief, THC does not intend to resume lawful use of the marks covered by THC's Registrations in connection with the goods listed in such registrations in United States commerce.

21. Lin's Waha will be damaged by THC's continued registration of the marks covered by THC's Registrations, as evidenced by the cancellation proceeding brought by THC against Lin's Waha's Registrations and the opposition proceeding brought by THC against Lin's Waha's Application.

22. THC has abandoned THC's Registrations in the United States pursuant to Section 45 of the Lanham Act, 15 U.S.C. § 1127.

23. Therefore, the Board should cancel THC's Registrations pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3).

WHEREFORE, Lin's Waha requests that the Board:

- (1) dismiss THC's opposition claims with prejudice;
- (2) sustain Lin's Waha's cancellation counterclaims;

- (3) cancel THC's U.S. Registration Nos. 1983965, 1999432, 2265233, 3409568, 3409569 and 2138029; and
- (4) award Lin's Waha such further and other relief as the Board deems just and proper.

Dated: New York, New York
May 24, 2016

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.

By: /Eric J. Shimanoff/
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Attorneys for Applicant/Counterclaimant Lin's
Waha International Corp

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ANSWER AND COUNTERCLAIMS were served on Opposer/Counterclaim-Respondent Tingyi (Cayman Islands) Holding Corp. by mailing a copy by First Class Mail, postage prepaid, on May 24, 2016, to Opposer/Counterclaim-Respondent's Attorney and Correspondent of Record, Paulo A. de Almeida, Patel & Almeida P.C., 16830 Ventura Blvd., Suite 360, Encino, CA 91436.

/Eric J. Shimanoff/

Eric J. Shimanoff