

07/16/2003TTAB

TTAB

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



NY-EXOTICS, INC.
Petitioner ("Plaintiff")

vs.

EXOTICS.COM, INC.
Registrant ("defendant")

Cancellation No. 92/040976
Registration No. 2,576,808
Mark: NY-EXOTICS.COM

ANSWER TO PETITION
FOR CANCELLATION;
POWER OF ATTORNEY

07-03-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

Honorable Commissioner:

Registrant, Exotics.com, Inc., by and through counsel hereby answers the Petition for Cancellation (*Petition*) filed by Petitioner NY-Exotics, Inc., as follows:

0. Referring to the Petition's initial unnumbered Paragraph: Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of said Paragraph and therefore denies same..

1. Registrant admits that the allegations of Paragraph 1 substantially agree with the data shown in the online database of the Patent and Trademark Office for the mark NY-EXOTICS.COM, registration no. 2,576,808.

2. Registrant admits that the online database of the Patent and Trademark Office indicates a pending U.S. trademark application by NY-Exotics, Inc. filed September 27, 2001, Serial No. 76/318,359 for NY-EXOTICS in international class 035. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the recitation of the mark's use alleged by the Petition. Except as specifically admitted, Registrant denies the allegations of paragraph 2 of the Petition.

3. Registrant admits that Petitioner has been engaged in providing advertising services, but lacks knowledge or information sufficient to form a belief as to the truth of the timing and continuity alleged of Paragraph 3 of the Petition, and therefore denies same

4. Registrant lacks knowledge or information sufficient to form a belief as to the truth of

07/16/003TTAB

the allegations of paragraph 4 of the Petition, and therefore denies same.

5. Registrant denies the allegations of the initial clauses of Petition paragraph 5.

a. Registrant admits the existence of a license agreement dated October 15, 1997 between Exotics USA LLC and Petitioner by which Petitioner was granted certain exclusive right to sell advertising. Registrant denies the existence of, or — in the alternative — the validity of, one of more of the amendments the Petition elleges. In the absence of Petitioner pleading a copy of said agreement with amendments and citing to specific language therein, Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of subparagraph 5.a of the Petition, and therefore denies same.

b. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the usage alleged in the final sentence of Paragraph 5.b of the Petition, and therefore denies same. Registrant denies all other allegations of paragraph 5.b.

c. Registrant admits it is the successor to the assets of Exotics USA LLC. As to the unspecified "actions" alleged, and in the absence of a copy of the 'specimen," Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.c of the Petition, and therefore denies same.

6. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Petition, and therefore denies same

FIRST AFFIRMATIVE DEFENSE

7. The Petition to Cancel fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

8. Registrant has not abandoned and has no intention of abandoning its registered trademark.

THIRD AFFIRMATIVE DEFENSE

9. Petitioner has unclean hand due to the actions of its officer/director while simultaneously a director of Registrant.

07/16/2003TTAB

FOURTH AFFIRMATIVE DEFENSE

10. Petitioner is estopped to petition for cancellation as a licensee — or in the alternative as a former licensee of Registrant.

FIFTH AFFIRMATIVE DEFENSE

11. Petitioner has acquiesced to the registration.

SIXTH AFFIRMATIVE DEFENSE

12. The document upon which the Petition is based is fraudulent or — alternatively — unauthorized by the Registrant.

DATED: June 30, 2003

Respectfully submitted,



Michael M. Krieger
Attorney for Registrant/Defendant
10920 Wilshire Blvd., Ste.150-9168
Los Angeles CA 90024
310/428-5208, fx: 310/788-3238
<mkrieger239@earthlink.net>

CERTIFICATE OF MAILING

I hereby certify that two copies of this ANSWER TO PETITION FOR CANCELLATION; POWER OF ATTORNEY are being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Trademarks,
BOX TTAB — NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Dated: June 30, 2003



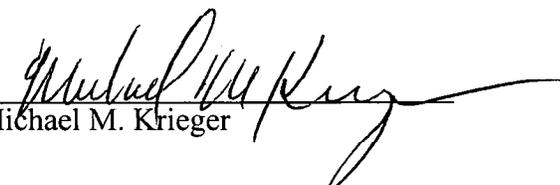
Michael M. Krieger

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this ANSWER TO PETITION FOR CANCELLATION; POWER OF ATTORNEY is being served on Petitioner by deposit with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Jenkins & Gilchrist
Attn: Cathryn A. Berryman
1445 Ross Avenue, Suite 3200
Dallas TX 75202-2799

Dated: June 30, 2003



Michael M. Krieger

07/16/2003TTAB

TRADEMARK
Appointment
of Attorney

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

Mark:	NY-EXOTICS.COM	} Cancellation No. 92040976 } APPOINTMENT OF ATTORNEY- } OF-RECORD TO RESPOND IN } CANCELLATION PROCEEDING
Registrant:	EXOTICS.COM, Inc.	
Registration No.	2,576,808	
Issue Date:	June 04, 2002	
Our file:	00398.0700.TmXln	

Hon. Commissioner for Trademarks:

The above-identified Applicant hereby appoints Michael M. Krieger, an attorney at law admitted to practice before the bar of the State of California, as Applicant's attorney of record to answer the present prosecuting this application for registration, with full power of substitution and revocation, to transact all business in the United States Patent and Trademark Office connected therewith and to receive all correspondence, pleadings and other documents at the address below. Kindly note that ^{Pamela Koslyn}~~Adam Siegler~~, Esq., is authorized to act in this matter should Mr. Krieger be unavailable.

Dated: June 30, 2003

By:



Ingo Mueller, President & CEO of
Respondent/Defendant

Please direct all communications to:

Michael M. Krieger.
Krieger Law Offices
10920 Wilshire Blvd., Suite 150-9168
Los Angeles CA 90024

310/428-5208, fax 310-478-8742

or otherwise to

Pamela Koslyn, Esq.
Siegler, Kuber & Sexton
9454 Wilshire Blvd., Suite 201
Beverly Hills, CA 90212

310/777-1111, fax 310/777-1114