ESTTA Tracking number: **ESTTA21698**
Filing date: **12/20/2004**

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

Proceeding	92043851
Party	Defendant LaGoy, Ann M. LaGoy, Ann M. 14 Clove Road Fishkill, NY 12524
Correspondence Address	Ann Lagoy 14 Clove Road Fishkill, NY 12524
Submission	Answer
Filer's Name	Paul C. Rapp, Esq.
Filer's e-mail	paul@paulrapp.com
Signature	/paul c rapp/
Date	12/20/2004
Attachments	opposition to cancellation.txt (3 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of Registration No. 2,794,939
Registrant: Ann Lagoy
Date of Issue: December 16, 2003
Mark: CLEARLY NATURAL & Design

Robert Rice,	)	
Petitioner,	)	Cancellation. 92043851
	)	
v.	)	
	)	
Ann Lagoy,	)	
Registrant	)	
_____	)	

ANSWER TO PETITION FOR CANCELLATION

Ann Lagoy, a United States citizen, residing at 14 Clove Road, Fishkill, New York 12524 (registrant), answers the Petition for Cancellation of Robert Rice ("Petitioner"), as follows:

1. Registrant admits the allegations in paragraph 1 of the Petition for Cancellation.
2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition for Cancellation and therefore denies such allegations.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition for Cancellation and therefore denies such allegations.
4. Registrant admits that the Patent and Trademark Office ("PTO") online database indicates that Petitioner owns federal trademark Reg. 1,306,698 for "glycerine toilet soap" based on a first use in commerce of October 15, 1978. Otherwise, Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Petition for Cancellation and therefore denies such allegations.
5. Registrant admits that the allegations in paragraph 5 of the Petition for Cancellation are reflected in the PTO online database. Otherwise, Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Petition for Cancellation and therefore denies such allegations.

6. Registrant admits that her registration is for "household cleaning preparations made from natural ingredients," and otherwise denies the allegations in paragraph 6 of the Petition for Cancellation.
7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition for Cancellation and therefore denies such allegations.
8. Registrant denies the allegations contained in paragraph 8 of the Petition for Cancellation.
9. Registrant denies the allegations contained in paragraph 9 of the Petition for Cancellation.
10. Registrant denies the allegations contained in paragraph 10 of the Petition for Cancellation.

11. Registrant denies the allegations contained in paragraph 11 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

12. There is no likelihood of confusion, mistake or deception of the purchasing public between Registrant's mark and Petitioner's mark when considered in their entireties. Registrant's mark is distinctly different from Petitioner's mark in appearance, and the Registrant's goods, household cleaning solutions, are unrelated and dissimilar to Petitioner's narrow offerings of glycerine toilet soaps.

13. The common portion between Registrant's mark and Petitioner's mark are the words "clearly natural." Both Petitioner and Registrant disclaim any exclusive right to use the word "natural." There are and have been a considerable number of trademarks used and registered in the United States by third parties in connection with the sale of various goods, including soaps, cleaning solutions and beverages, which include these or highly similar words as part thereof. As a result of the proliferation of such third party usage, application and registration, the public has become accustomed to trademarks which include the words "clear," "clearly," "natural," and "naturally" on a variety of goods and Petitioner cannot assert an alleged confusing similarity between Registrant's and Petitioner's marks based on such common words. Furthermore, the aforementioned proliferation of marks which include these words on soaps and cleaning solutions serves to narrow the scope of protection to which Petitioner's mark is entitled and forecloses Petitioner's right to bar Registrant's use and/or registration of its mark CLEARLY NATURAL and Design.

14. Petitioner's attempt to cancel Registrant's mark is barred by the doctrines of laches and acquiescence. Petitioner was aware of Registrant's use of the mark and pending registration prior to Registrant's application being published for opposition on September 23, 2003, as evidenced by a communication between Petitioner and Registrant prior to that date during which Registrant's application was discussed. Petitioner, despite his knowledge of Registrant's pending application, failed to file an opposition to Registrant's application during the publication period, and has not communicated with Registrant for over twelve months prior to the date Registrant received Petitioner's Petition for Cancellation. During the period between the parties' last communication and today, Registrant has expended considerable time, effort and money developing, promoting, and growing her brand for household cleaning products. In addition to building goodwill and customer awareness, Registrant has spent in excess of $15,000 during this time period.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed.

Dated, December 20, 2004

Respectfully submitted,

/paul c rapp/

_____

Paul C. Rapp, Esq.
Attorney for Registrant Ann Lagoy
Paul C. Rapp, Esq.
Hoffman, Warnick and D'Alessandro LLC
Three E-Comm Square

Albany, New York 12207
(518) 935-4568
paul@paulrapp.com

CERTIFICATE OF SERVICE

One copy of the foregoing ANSWER TO PETITION FOR CANCELLATION has been mailed in a postage prepaid envelope deposited in a box under the custody of the U.S. Postal Service this 20th day of December, 2004 to J. Scott Gerien, Esq., Owen, Wickersham & Erickson, PC, 455 Market Street, 19th Floor, San Francisco, CA 94105