

ESTTA Tracking number: **ESTTA43516**

Filing date: **08/29/2005**

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

Proceeding	92044697
Party	Defendant Martello, Jeannette Martello, Jeannette 501 Floral Park Terrace South Pasadena, CA 91030
Correspondence Address	Martello, Jeannette 501 Floral Park Terrace South Pasadena, CA 91030
Submission	Answer
Filer's Name	Brandon M. Tesser
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Date	08/29/2005
Attachments	Answer.pdf (5 pages)

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8 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
9 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
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11 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
) Reg. No. 2932593
12)
Petitioner,)
) ANSWER TO PETITION FOR
13 vs.) CANCELLATION
)
14 JEANNETTE MARTELLO, M.D.,)
)
15)
Respondent.)
16 _____)
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19 Respondent Jeannette Martello, M.D. (“Martello” or “Respondent”), pursuant to the
20 TTAB Trademark Rules of Practice, § 311, admits, denies, and defends the Petition for
21 Cancellation filed by Petitioner ACM Enterprises, Inc. (“ACM” or “Petitioner”), as follows:

22 1. Answering paragraph 1 of the Petition, Martello lacks information or belief

1 sufficient to answer those allegations, and therefore denies all such allegations.

2 5. Answering paragraph 5 of the Petition, Martello admits that, on February 17,
3 2005, ACM filed a U.S. Trademark Application No. 78569772 for “SKIN DEEP LASER MED
4 SPA” for International Class 044. Martello denies the remainder of the allegations in paragraph
5 5.

6 6. Answering paragraph 6 of the Petition, Martello admits that, on March 15, 2004,
7 Martello filed a U.S. Trademark Application Serial No. 76581387 for “SKIN DEEP” for
8 “medical services; healthspa services, namely cosmetic body care services; cosmetician services;
9 physician services.” Martello denies the remainder of the allegations in paragraph 6.

10 7. Answering paragraph 7 of the Petition, Martello admits that, on March 4, 2004,
11 Martello filed a U.S. Trademark Application Serial No. 76579565 for “SKIN DEEP LASER
12 MEDSPA” for “medical services; healthspa services, namely cosmetic body care services;
13 cosmetician services; physician services.” Martello denies the remainder of the allegations in
14 paragraph 7.

15 8. Answering paragraph 8 of the Petition, Martello admits that, on March 15, 2004,
16 Martello filed a U.S. Trademark Application Serial No. 76581391 for “SKIN DEEP LASER” for
17 “medical services; healthspa services, namely cosmetic body care services; cosmetician services;
18 physician services.” Martello denies the remainder of the allegations in paragraph 8.

19 9. Answering paragraph 9 of the Petition, Martello denies all such allegations,
20 except admits that Martello has used the marks “Skin Deep,” “Skin Deep Laser,” and “Skin
21 Deep Laser Medspa.”

22 10. Answering paragraph 10 of the Petition, Martello denies all such allegations.

1 AFFIRMATIVE DEFENSES

2 For her affirmative defenses to the Petition, Respondent Martello alleges as follows:

3 FIRST AFFIRMATIVE DEFENSE

4 14. The Petition, and each and every count therein, fail to state facts upon which
5 relief may be granted against Respondent.

6 SECOND AFFIRMATIVE DEFENSE

7 15. Respondent alleges that Petitioner's claims are entirely offset by valid claims on
8 Respondent's part.

9 THIRD AFFIRMATIVE DEFENSE

10 16. Respondent alleges that Petitioner's claims are barred by the applicable statutes of
11 limitations.

12 FOURTH AFFIRMATIVE DEFENSE

13 17. Respondent alleges that Petitioner's claims are barred by estoppel.

14 FIFTH AFFIRMATIVE DEFENSE

15 18. Respondent alleges that Petitioner's claims are barred by its unclean hands.

16 SIXTH AFFIRMATIVE DEFENSE

17 19. Respondent alleges that Petitioner's claims are barred by waiver.

18 SEVENTH AFFIRMATIVE DEFENSE

19 20. Respondent alleges that Petitioner's claims are barred by its laches.

20 EIGHTH AFFIRMATIVE DEFENSE

21 21. Respondent alleges that Petitioner's claims are barred by the doctrine *in pari*
22 *delicto*.

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ELEVENTH AFFIRMATIVE DEFENSE

24. Respondent alleges there is no actual conflict between her marks and Petitioner's alleged marks.

TENTH AFFIRMATIVE DEFENSE

25. Respondent alleges there is no evidence that Petition has in fact used its alleged marks in commerce or elsewhere.

PRAYER

WHEREFORE, Respondent Martello prays for judgment as follows:

- 1. That Petitioner take nothing by its Petition and that it be denied and dismissed;
- 2. For costs of suit incurred herein, according to proof;
- 3. For reasonable attorneys' fees, if legally proper and allowed by the TTAB; and
- 4. For such other and further relief as the TTAB deems just and proper.

Dated: August 29, 2005

TESSER & RUTTENBERG

By: _____
Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am
4 over the age of 18 and not a party to the within action; my business address is 12100 Wilshire
Boulevard, Suite 220, Los Angeles, California 90025.

5 On August 29, 2005, I served the foregoing document(s) described as ANSWER TO
6 PETITION FOR CANCELLATION in this action by placing a true copy thereof enclosed in a
sealed envelope addressed as follows:

7 Michelle Katz, Esq.
4205 Kester Ave.
8 Sherman Oaks, CA 94103-4134
Tel: (818) 783-9729/Fax: (818) 990-8281
9 michelle@mkatzlaw.com
Attorney for Petitioner

10 [x] BY MAIL: I am readily familiar with my firm's practice for the collection and
11 processing of correspondence for mailing with the United States Postal Service.
12 In the ordinary course of business, correspondence would be deposited with the
13 United States Postal Service that same day. I placed true copies of the above-
entitled document in envelopes addressed as shown above and sealed and placed
14 them for collection and mailing on the date stated above, following ordinary
business practices.

15 [] BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to
the offices of the addressee(s) as marked with an ***.

16 [] BY FEDERAL EXPRESS: I caused said envelope(s) to be sent by Federal
Express to the addressee(s) on the attached service list.

17 [] BY TELECOPIER: In addition to the above service by mail, hand delivery, or
18 Federal Express, I caused said document(s) to be transmitted by telecopier on
June 24, 2005 at approximately 6:30 p.m. to the addressee(s) above.

19 [x] (Federal) I declare that I am employed in the office of a member of the bar of this
20 court at whose direction the service was made.

21 Executed on August 29, 2005, at Los Angeles, California.

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