ESTTA Tracking number: **ESTTA346890**
Filing date: **05/11/2010**

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

Proceeding	92044697
Party	Defendant Jeannette Martello
Correspondence Address	Jeannette Martello 701 Fremont Avenue South Pasadena, CA 91030 UNITED STATES drmartello@hotmail.com, martello@skindeepworld.com
Submission	Answer
Filer's Name	Thomas J. Daly
Filer's e-mail	pto@cph.com
Signature	/Thomas J. Daly/
Date	05/11/2010
Attachments	M1073-110-2-1 Answer.PDF (6 pages)(77506 bytes)

SERVICE MARK
Docket No. 110.2-1/M1073

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

ACM Enterprises, Inc. Opposer, v. Jeannette Martello Applicant.	Cancellation No. 92044697 ANSWER TO FIRST AMENDED PETITION TO CANCEL

Respondent Jeannette Martello, M.D. ("Martello" or "Respondent") pursuant to the TTAB Trademark Rules of Practice, § 311, admits, denies, and defends the Amended Petition to Cancel filed by Petitioner ACM Enterprises, Inc. ("ACM" or "Petitioner"), as follows:

1. Answering paragraph 1 of the Amended Petition, Martello lacks information or belief sufficient to answer those allegations, and therefore denies all such allegations.

2. Answering paragraph 2 of the Amended Petition, Martello admits the allegations therein except to note that her claimed date of first use in commerce was at least as early as February 2, 2004.

3. Answering paragraph 3 of the Amended Petition, Martello admits the allegations therein except to note that the undersigned is her current counsel of record to whom correspondence should be directed.

4. Answering paragraph 4 of the Amended Petition, Martello lacks information or belief sufficient to answer those allegations concerning use and scope of use of "SKIN DEEP LASER MED SPA," and therefore denies all such allegations. Upon information and belief,

Martello denies the remainder of the allegations in paragraph 4, particularly that Petitioner has standing and the allegations as to date of first use.

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

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

7. Answering paragraph 7 of the Amended Petition, Martello admits that, on March 4, 2004, Martello filed a U.S. Trademark Applications Serial No. 76579565 for "SKIN DEEP LASER MEDSPA" for "medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services." Martello denies the remainder of the allegations in paragraph 7.

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

9. Answering paragraph 9 of the Amended Petition, Martello denies all such allegations, except admits that Martello has used the marks, "Skin Deep," "Skin Deep Laser," and "Skin Deep Laser Medspa."

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

11. Answering paragraph 11 of the Amended Petition, Martello denies all such allegations.

12. Answering paragraph 12 of the Amended Petition, Martello admits that she is the owner of the identified registrations. Martello denies the remainder of the allegations in paragraph 12.

13. Answering paragraph 13 of the Amended Petition, Martello states that the specimen mentioned shows what it shows. Martello denies the allegations in paragraph 13.

14. Answering paragraph 14 of the Amended Petition, Martello states that the specimens mentioned show what they show. Martello denies the allegations in paragraph 14.

15. Answering paragraph 15 of the Amended Petition, Martello states that the specimen mentioned shows what it shows. Martello denies the allegations in paragraph 15.

16. Answering paragraph 16 of the Amended Petition, Martello denies all such allegations.

17. Answering paragraph 17 of the Amended Petition, Martello denies all such allegations and that Petitioner is entitled to the relief sought.

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

19. Respondent alleges that Petitioner's claims are entirely offset by valid claims on Respondent's part.

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

25. Respondent alleges that Petitioner's claims area barred by the doctrine *in pari delicto.*

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

27. Respondent alleges that Petitioner lacks standing to bring a Petition to Cancel at least because it does not have prior use of its alleged marks in commerce.

PRAYER

WHEREFORE, Respondent Martello prays for judgment as follows:

1. That Petitioner take nothing by its Amended Petition and that it be denied and dismissed;

2. For such other and further relief as the TTAB deems just and proper.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date May 11, 2010

By

Thomas J. Daly
Attorneys for Applicant
P.O. Box 7068
Pasadena, California 91109-7068
626/795-9900

TJD/agj

AGJ PAS901051.1-*-05/11/10 5:01 PM

Docket No. 110.2-1/M1073

CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on May 11, 2010, the foregoing **ANSWER TO FIRST AMENDED PETITION TO CANCEL** is being electronically filed with the

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on May 11, 2010, the foregoing **ANSWER TO FIRST AMENDED PETITION TO CANCEL** is being served by mailing a copy thereof by first-class mail addressed to:

David Hong
Law Office of David Hong
P.O. Box 2111
Santa Clarita, California 91386-2111

By _____
Thomas J. Daly
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

AGJ PAS901051.1-*-05/11/10 4:42 PM