

ESTTA Tracking number: **ESTTA76499**

Filing date: **04/17/2006**

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

Proceeding	92045173
Party	Defendant CYCLOPIAN MUSIC, INC. CYCLOPIAN MUSIC, INC. 107 Maple Grange Road Vernon, NJ 07462
Correspondence Address	SABRINA J. HUDSON KIRKPATRICK & LOCKHART NICHOLSON GRAHAM 535 SMITHFIELD STREET, HENRY W. OLIVER BLDG. PITTSBURGH, PA 15222
Submission	Answer
Filer's Name	Sabrina J. Hudson
Filer's e-mail	shudson@kling.com,trademarks@kling.com
Signature	/Sabrina J. Hudson/
Date	04/17/2006
Attachments	Cyclopians'_Answer_and_Affirmative_Defenses.pdf (5 pages)

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

GLENN DANZIG,)	
)	
Petitioner,)	
)	Cancellation No. 92045173
v.)	
)	Reg. Nos. 2793533, 2634215,
CYCLOPIAN MUSIC, INC.,)	2735848
)	
Registrant.)	

REGISTRANT’S ANSWER AND AFFIRMATIVE DEFENSES

Registrant Cyclopien Music, Inc. (“Cyclopien Music”), through its undersigned counsel, submits the following Answer and Affirmative Defenses in response to Petitioner Glenn Danzig’s (“Petitioner”) Petition for Cancellation.

ANSWER

1. Denied, except Cyclopien Music admits that Petitioner was one of the founders of the “Misfits” and at one time was the lead vocalist.
2. Denied, except Cyclopien Music admits that it is the owner of the subject registrations.
3. The allegations concern a document that speaks for itself and therefore no further response is required. To the extent a response is deemed necessary, the allegations are denied, except Cyclopien Music admits that a Settlement Agreement dated as of December 31, 1994 was entered into by and among Gerald Caiafa, Paul Caiafa, Frank Licata, and Julio Valverde and Petitioner.

4. The allegations concern documents that speak for themselves and therefore no further response is required. To the extent a response is deemed necessary, the allegations are denied.

5. The allegations constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, the allegations are denied.

6. The allegations constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, the allegations are denied.

7. The allegations constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, the allegations are denied.

8. The allegations constitute legal conclusions to which no response is required. To the extent a response is deemed necessary, the allegations are denied.

WHEREFORE, Cycloplan Music respectfully requests that the Board deny Petitioner's Petition for Cancellation.

AFFIRMATIVE DEFENSES

In further answer to the Petition for Cancellation, Registrant asserts the following affirmative defenses.

First Affirmative Defense

Petitioner has failed to state a claim, in whole or in part, upon which relief may be granted.

Second Affirmative Defense

Petitioner will not be damaged in any way by the continued registration of the subject marks.

Third Affirmative Defense

Petitioner's claims are barred in whole or in part because Petitioner has not used the marks in U.S. commerce in connection with the goods and services covered by the subject registrations.

Fourth Affirmative Defense

Petitioner's claims are barred in whole or in part because the 1994 Settlement Agreement specifically prohibits Petitioner from using the marks in connection with goods and services covered by the subject registrations.

Fifth Affirmative Defense

Petitioner's claims are barred in whole or in part because Petitioner abandoned any trademark rights he may have had in the subject marks.

Sixth Affirmative Defense

Petitioner's claims are barred in whole or in part because Cycloplan Music has exclusively publicly performed and recorded as the MISFITS for the last decade.

Seventh Affirmative Defense

Petitioner's claims are barred in whole or in part by laches.

Eighth Affirmative Defense

Petitioner's claims are barred in whole or in part by waiver.

Ninth Affirmative Defense

Petitioner's claims are barred in whole or in part by acquiescence.

Tenth Affirmative Defense

Petitioner's claims are barred in whole or in part by estoppel.

Eleventh Affirmative Defense

Petitioner's claims are barred in whole or in part by the doctrine of unclean hands.

Twelfth Affirmative Defense

Petitioner's claims are barred in whole or in part by release.

Thirteenth Affirmative Defense

Petitioner's claims are barred in whole or in part by the applicable statute of limitations.

Respectfully submitted,

April 17, 2006

s/ Sabrina J. Hudson
Curtis B. Krasik, Esquire
Sabrina J. Hudson, Esquire
KIRKPATRICK & LOCKHART NICHOLSON
GRAHAM LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
(412) 355-6500 (Telephone)
(412) 355-6501 (Facsimile)

Attorneys for Registrant
Cycloplan Music, Inc.

Certificate of Service

I certify that a copy of the foregoing Registrant's Answer and Affirmative Defenses was served by U.S. first-class mail on April 17, 2006, on the following counsel of record for Petitioner Glenn Danzig:

Rod S. Berman
Jeffer, Mangels, Butler & Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

s/ Sabrina J. Hudson
Sabrina J. Hudson