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

Proceeding	92046965
Party	Defendant ELM Development, LLC ELM Development, LLC 15660 Ramsey Blvd., N.W. Ramsey, MN 55123
Correspondence Address	ELM Development, LLC 15660 Ramsey Blvd., N.W. Ramsey, MN 55123 UNITED STATES
Submission	Answer
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Date	01/30/2007
Attachments	ANSWER (92046965).pdf (6 pages)(214096 bytes)

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

_____)	
Gander Mountain Company,)	Cancellation No. 92046965
)	
Petitioner,)	Mark: THE GANDERGUNMEN
)	
v.)	Reg. No. 3086200
)	
ELM Development, LLC,)	Reg. Date: April 25, 2006
)	
Registrant.)	
_____)	

REGISTRANT'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW REGISTRANT, ELM Development, LLC, to answer Petitioner's Petition for Cancellation in this proceeding. Any and all allegations not specifically admitted herein are denied. The numbered allegations will be responded to below:

1. Registrant admits that Petitioner has been engaged in the marketing, sale and promotion of retail store services in the fields of hunting, fishing and camping equipment and clothing and apparel under the GANDER MOUNTAIN mark. As to remainder of the allegations in Paragraph 1 of the Petition for Cancellation, Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and, therefore, denies same.

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 same.

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 same, leaving Petitioner to its proof thereof.

4. Registrant admits the allegations contained in Paragraph 4 of the Petition for Cancellation.

5. 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 same, leaving Petitioner to its proof thereof.

6. Registrant admits the allegations contained 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 same, leaving Petitioner to its proof thereof.

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 is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Petition for Cancellation and, therefore, denies same

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Petition for Cancellation and, therefore, denies same.

12. Registrant denies the allegations contained in Paragraph 12 of the Petition for Cancellation.

13. Registrant denies the allegations contained in Paragraph 13 of the Petition for Cancellation.

14. Registrant denies the allegations contained in Paragraph 14 of the Petition for Cancellation.

15. Registrant denies the allegations contained in Paragraph 15 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

16. Registrant repeats and re-alleges the averments set forth in Paragraphs 1 through 15 herein as if fully set forth again at length.

17. Petitioner has failed to state a claim upon which relief can be granted.

18. Registrant's application for the mark THE GANDERGUNMEN filed December 9, 2003 for entertainment services, namely, production and distribution of a hunting show has priority over Petitioner's application Serial No. 77/074177 to register the mark GANDER MTN. for "entertainment in the nature of on-going television programs with outdoor themes" filed January 2, 2007 and alleging a date of first use in commerce of January 3, 2004 in view of Registrant's earlier effective filing date of December 9, 2003.

19. Petitioner's marks are composed primarily of the term GANDER which is the common commercial name for and defined as a male goose. As such, the term GANDER must be considered generic and consequently afforded a narrow scope of protection in connection with any goods or services related specifically to goose hunting under 15 U.S.C. § 1065(4).

20. In view of the overall differences in the appearance, suggestion, connotation and sound when comparing Registrant's THE GANDERGUNMEN and the Petitioner's GANDER MTN. and GANDER MOUNTAIN marks there is no possibility of consumer confusion under Trademark Act § 2(d), 15 U.S.C. § 1052(d).

WHEREFORE, Registrant requests that Petitioner's claims be dismissed, with prejudice, and the registration of the mark THE GANDERGUNMEN maintained.

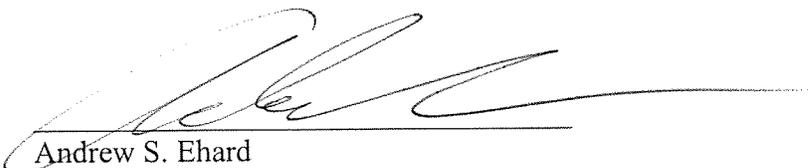
It is believed that no fee is required for filing this paper. In the event that any fee is required, the Commissioner of Trademarks is authorized to charge the underpayment or any fees in connection herewith to Deposit Account No. 13-2725.

Respectfully submitted,

ELM Development, LLC

By its attorneys,

1-30-07
Date


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES has been served via both e-mail and U.S. Mail, this 30 day of January, 2007 as follows:

Paul Mussell
Dorsey & Whitney LLP
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402

Date : 1-30-07

By: 
Andrew S. Ehard
Attorney for Applicant