

ESTTA Tracking number: **ESTTA176025**

Filing date: **11/20/2007**

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

Proceeding	92048092
Party	Defendant H2OCEAN INC.
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Submission	Answer
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Date	11/20/2007
Attachments	Answer.pdf (5 pages)(39608 bytes)

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

Fleming and Company, Pharmaceuticals,
Petitioner,

Cancellation No. 92048092
Reg. No. 3,074,033

v.

H2Ocean, Inc.,
Respondent.

_____ /

**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES TO PETITIONER'S
PETITION FOR CANCELLATION**

Respondent, H2Ocean, Inc. ("H2Ocean"), files its Answer and Affirmative Defenses to Petitioner, Fleming and Company, Pharmaceuticals', Petition for Cancellation and states:

1. Admitted.
2. Admitted.
3. Respondent is without knowledge as to the allegations of Paragraph 3 and therefore denied.
4. The document attached as Exhibit A to the Petition for Cancellation speaks for itself. Respondent is without knowledge as to the remainder of Paragraph 4 and those allegations are therefore denied.
5. Respondent is without knowledge as to the allegations of Paragraph 5 and therefore denied.
6. Respondent is without knowledge as to the allegations of Paragraph 6 and therefore denied.

7. See answer as set forth above.
8. Admitted.
9. Respondent is without knowledge as to the allegations of Paragraph 9 and therefore denied.
10. Admitted that Respondent has used and continues to use the "Ocean Aid Spray" trademark. Denied that Petitioner's consent or permission is required for such use.
11. Denied.
12. Denied.
13. Denied.
14. See answer as set forth above.
15. Admitted that Respondent made representations of fact in its Statement of Use for the application regarding Registration No. 3,074,033. The remaining allegations of Paragraph 15 are denied.
16. Denied.
17. Denied.
18. Respondent is without knowledge as to the allegations of Paragraph 18 and therefore denied.
19. Denied.
20. Denied.
21. All allegations not specifically admitted herein are denied.

WHEREFORE, Respondent, H2Ocean, Inc., requests that the Board dismiss the Petitioner's Petition for Cancellation with prejudice and award Respondent attorneys' fees and costs and grant such further relief that the Board deems just and proper.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Petitioner has failed to state a cause of action and/or fails to state a claim upon which relief can be granted. In particular, Petitioner fails to state sufficient facts to support its claim that Respondent acted fraudulently while obtaining a federal registration for the “Ocean Aid Spray” trademark. Petitioner also fails to plead any fact which would support a finding of likelihood of confusion between the parties’ marks and respective products.

Second Affirmative Defense

The Petitioner has acquiesced, through its action or inaction, to the Respondent’s use of the “Ocean Aid Spray” Mark.

Third Affirmative Defense

The Petitioner has lost any rights to its marks due to extensive third-party use of the word “Ocean” in commerce.

Fourth Affirmative Defense

The products sold in commerce under Petitioner’s mark are not similar to those sold under Respondent’s Mark and if any similarity exists which could result in a likelihood of confusion, Respondent’s Registration should be modified or amended to limit the similar goods and services included thereunder.

Fifth Affirmative Defense

Petitioner has abandoned any rights to the “Ocean” mark.

Sixth Affirmative Defense

Petitioner is estopped from asserting any of the claims raised in the Petition for

Cancellation due to unclean hands.

Seventh Affirmative Defense

Petitioner is barred by laches from enforcing any trademarks rights it may have had in its marks.

Eighth Affirmative Defense

Petitioner has suffered no damages as the result of Respondent's use of the "Ocean Spray Aid" trademark and/or Registration No. 3,074,033.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically through the Electronic System for Trademark Trials and Appeals on this 20th day of November, 2007 on all counsel or parties of record on the attached service list.

RESPECTFULLY SUBMITTED:

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