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

Proceeding	92048118
Party	Defendant Select Export Corp. dba Trident
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Submission	Answer
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Date	10/27/2007
Attachments	SEC.010 Answer to Petition to Cancel Jack Richeson.pdf (5 pages)(31145 bytes)

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

Jack Richeson & Co., Inc.,
Petitioner

v.

Select Export Corp. D/B/A Trident
Respondent

In the matter of
Trademark Registration No. 2,619,642
For the mark: TRIDENT (and design)
International Classes 9, 16, and 20

Cancellation No.: 92048118

RESPONDENT'S ANSWER TO
PETITION TO CANCEL

SEC.0401

RESPONDENT'S ANSWER TO PETITION TO CANCEL

Respondent Select Export Corp. ("Respondent"), by its attorneys, hereby answers the allegations set forth in the Petition to Cancel No. 92048118 for Trademark Registration Number 2,619,642 ("Petition to Cancel") as follows:

1. Respondent denies the allegation in the preamble that Petitioner "will be damaged by the continued registration of the mark TRIDENT & design, which is set forth in Reg. No. 2,619,642 and owned by Select Export Corp. dba Trident...."
2. Respondent denies the allegations set forth in Paragraph 1 of the Petition to Cancel.
3. Respondent admits that on June 28, 2000 Respondent filed application Serial Number 76/078,278 based on Respondent's use of Respondent's mark TRIDENT & design, Registration No. 2,619,642, which was registered on September 17, 2002 with dates of first use at least as early as March, 1, 1988. Respondent is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 2 of the Petition to Cancel and, therefore, denies said allegations.
4. Respondent admits the identification allegations set forth in Paragraph 3 of the Petition to Cancel.
5. Respondent denies the allegations set forth in Paragraph 4 of the Petition to Cancel as mischaracterized by Petitioner.
6. Respondent denies the allegations set forth in Paragraph 5 of the Petition to Cancel.

SEC.001

7. Respondent denies the allegations set forth in Paragraph 6 of the Petition to Cancel.

8. Respondent denies the allegations set forth in Paragraph 7 of the Petition to Cancel.

9. Respondent is without knowledge or sufficient information to form a belief as to the truth of the allegations in Paragraph 8 of the Petition to Cancel as characterized by Petitioner and, therefore, denies said allegations.

10. Respondent admits that Respondent is the true owner of the mark set forth in Reg. No. 2,619,642. Respondent denies the remaining allegations set forth in Paragraph 9 of the Petition to Cancel.

11. Respondent denies the allegations set forth in Paragraph 10 of the Petition to Cancel.

12. Respondent denies the allegations set forth in Paragraph 11 of the Petition to Cancel.

13. Respondent denies the allegations set forth in Paragraph 12 of the Petition to Cancel.

14. Respondent denies the allegations set forth in Paragraph 13 of the Petition to Cancel.

15. Respondent denies the allegations set forth in Paragraph 14 of the Petition to Cancel.

Respondent expressly denies any and all allegations in the Petition to Cancel not expressly admitted above.

Ad Damnum Clause

Respondent denies Petitioner is entitled to the relief it seeks.

AFFIRMATIVE DEFENSES

1. Petitioner is precluded and estopped from petitioning to cancel Respondent's TRIDENT & design registration because of Prior Judgment. Petitioner is admittedly relying on the alleged rights of its alleged sole predecessor-in-interest Trident S/A Industria De Precisao.

Trident S/A Industria De Precisao filed a Petition to Cancel, Cancellation No. 92043330, against Respondent as filed on May 18, 2004 for the same issues and by the same alleged rights holder as set forth in the Petition to Cancel hereunder. Judgment was entered against the same alleged rights holder as predecessor-in-interest, Trident S/A Industria De Precisao, and such Petition to Cancel was dismissed with prejudice.

2. Petitioner is precluded and estopped from petitioning to cancel Respondent's TRIDENT & design registration because of Res Judicata. Petitioner is admittedly relying on the alleged rights of its alleged predecessor-in-interest Trident S/A Industria De Precisao. Trident S/A Industria De Precisao filed a Petition to Cancel, Cancellation No. 92043330 against Respondent as filed on May 18, 2004 for the same issues and by the same alleged rights holder as set forth in the Petition to Cancel hereunder. Judgment was entered against the same alleged rights holder as predecessor-in-interest, Trident S/A Industria De Precisao, and such Petition to Cancel was dismissed with prejudice.

3. Petitioner is precluded and estopped from petitioning to cancel Respondent's TRIDENT & design registration because of Collateral Estoppel. Petitioner is admittedly relying on the alleged rights of its alleged predecessor-in-interest Trident S/A Industria De Precisao. Trident S/A Industria De Precisao filed a Petition to Cancel, Cancellation No. 92043330 against Respondent as filed on May 18, 2004 for the same issues and by the same alleged rights holder as set forth in the Petition to Cancel hereunder. Judgment was entered against the same alleged rights holder as predecessor-in-interest, Trident S/A Industria De Precisao, and such Petition to Cancel was dismissed with prejudice.

4. The Petition to Cancel fails to state a claim upon which relief can be granted.

5. Respondent has prior and superceding rights to the mark TRIDENT & design as used in connection with Registration 2,619,642.

6. Petitioner is estopped from petitioning to cancel Respondent's TRIDENT & design Registration because Petitioner is and has been well aware of Respondent's ownership rights to the TRIDENT & design mark prior to Petitioner's use of the mark and has acknowledged Respondent's valid ownership rights to the TRIDENT & design mark to Respondent on multiple occasions.

7. Petitioner is prohibited from petitioning to cancel Respondent's TRIDENT & design Registration because Petitioner has unclean hands in trying to acquire and intentionally infringe upon Respondent's trademark rights in TRIDENT & design.

8. Petitioner is prohibited by laches from petitioning to cancel Respondent's registration of TRIDENT & design because Petitioner had knowledge of Respondent's sole use of TRIDENT & design in the United States since at least as early as the late 1980's and based upon Respondent's former and current Registration for the mark TRIDENT & design encompassing over 11 years of registration.

9. The earliest priority date upon which Petitioner's predecessor-in-interest can rely in connection with its TRIDENT & design mark for the goods "office furniture" set forth in International Class 20 and "easels; drawing boards for engineering and industrial drawing" set forth in International Class 16 is November 8, 2001 in accordance with its now abandoned §44(e) and 1(b) based Trademark Application Serial Number 76/336,986.

10. Respondent applied for its TRIDENT & design use-based trademark registration on June 28, 2000 and received valid Registration No. 2,619,642 for TRIDENT & design for the goods as set forth in Petitioner's Exhibit A in International Classes 9, 16, and 20 with dates of first use of March 3, 1988, well prior to Petitioner's predecessor-in-interest's filing date of its §44(e) and 1(b) based Trademark Application Serial Number 76/336,986 filed on November 8, 2001. Thus Respondent's TRIDENT & design mark has priority and superceding rights over Petitioner's mark, as well as any of Petitioner's predecessor-in-interest's alleged common law rights in the TRIDENT (and design) mark.

Respectfully submitted,



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October 27, 2007
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent's Answer to Petition to Cancel was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Paul W. Kruse, Esq., Bone McAllester Norton PLLC, 511 Union Street, Suite 1600, Nashville, Tennessee, 37219, on the date set forth below.



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October 27, 2007
Date

CERTIFICATE OF ESTTA MAILING

Date of Deposit October 27, 2007

Signature 
Name: Cheryl Meide, Esquire

I hereby certify that this document to the Trademark Trial and Appeal board is being submitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") on the dated noted above.