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

Proceeding	92049992
Party	Defendant Siwy Denim of America, LLC
Correspondence Address	Siwy Denim of America, LLC 10 W. Juniper Lane Cleveland, OH 44022 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Susan Rabin
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Date	11/07/2008
Attachments	TTAB[1].pdf (1 page)(36516 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Submitted November 7, 2008
Cancellation No. 92049992
Registration No. 3,170,714

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BLUE AMBROSIA, INC.

v.

SIWY DENIM OF AMERICA, LLC

Respondent SIWY DENIM OF AMERICA, LLC, moves to dismiss the groundless Cancellation petition filed by BLUE AMBROSIA, INC. Respondent has been using its registered Mark SIWY DENIM and registered Designs continuously in commerce on its denim apparel since in or around early 2005. Respondent notified the Opposer, BLUE AMBROSIA, INC., directly and through Opposer's distributor of its infringing activity and the parties have engaged in correspondences over a number of months from December, 2007 through May, 2007.

Opposer purported to act in good faith and misrepresented that it agreed to address Respondent's claims. Instead, Opposer has continued to willfully infringe. A federal lawsuit was filed by Respondent August 22, 2008. Opposer retaliated with its present unfounded Cancellation action with no legal basis and not in compliance with the bases afforded under Federal Rule 12 (b)(c). For the foregoing reasons, therefore, Defendant and Respondent SIWY DENIM OF AMERICA, LLC respectfully requests that the TTAB dismiss the Cancellation of BLUE AMBROSIA, INC. with prejudice.

Respectfully submitted,

/susan rabin/
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