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

Proceeding	92052061
Party	Defendant Brixton, LLC dba Brixton Ltd.
Correspondence Address	Brixton, LLC dba Brixton Ltd. 4040 Calle Platino , Suite 102 Oceanside, CA 92056 UNITED STATES
Submission	Answer
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Date	04/09/2010
Attachments	Signed Answer to Cancellation Petition.pdf (8 pages)(152938 bytes)

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

JOE'S JEANS, INC.)	
)	
)	
Petitioner,)	Cancellation No.
)	92052061
v.)	
)	ANSWER TO PETITION
)	FOR CANCELLATION
BRIXTON, LLC D/B/A BRIXTON LTD.,)	
)	
)	
Registrant.)	

ANSWER TO PETITION FOR CANCELLATION

Registrant, Brixton, LLC d/b/a Brixton Ltd., by and through its Attorneys, Friedman Stroffe & Gerard, P.C., hereby Answers the Petition for Cancellation ("Petition") of Petitioner, JOE'S JEANS, INC., and admits, denies and alleges as follows:

1. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 1 of the Petition and therefore denies those allegations.

2. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 2 of the Petition and therefore denies those allegations.

3. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the Petition and therefore denies those allegations.

4. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 4 of the Petition and therefore denies those allegations.

5. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 5 of the Petition and therefore denies those allegations.

6. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 6 of the Petition and therefore denies those allegations.

7. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 7 of the Petition and therefore denies those allegations.

8. Registrant is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 8 of the Petition and therefore denies those allegations.

9. Registrant admits the allegations in paragraph 9 of the Petition that Registrant has been using and secured the following three registrations for the mark BRIXTON in connection with goods in Class 25: (a) No. 3148186 for the mark B BRIXTON LTD & Design, (b) No. 3109807 for the mark BRIXTON, and (c) No. 3511902

for the mark BRIXTON. Registrant admits that Petitioner has never “authorized” Registrant to “utilize” Petitioner’s alleged trademark. Registrant denies all other allegations set forth in paragraph 9 of the Petition.

10. Registrant denies the allegation in paragraph 10 of the Petition that Registrant began using Registrant’s Marks in commerce in May or June of 2005. Registrant is without knowledge or sufficient information to form a belief as to the truth of any other allegations in paragraph 10 of the Petition and therefore denies all such allegations.

11. Registrant admits the allegation in paragraph 11 of the Petition that Registrant is using Registrant’s Marks to sell apparel products. Registrant denies all other allegations in paragraph 11 of the Petition.

12. Registrant denies the allegations set forth in paragraph 12 of the Petition.

13. Registrant admits the allegation in paragraph 13 of the Petition that Petitioner commenced an action for trademark infringement against Registrant in the United States District Court for the Central District of California, Western Division, CV No. 09-04753 and that this litigation is currently pending. Registrant denies all other allegations in paragraph 13 of the Petition.

14. Registrant denies the allegation set forth in paragraph 14 of the Petition that Registrant’s Marks are likely to cause confusion with Petitioner’s alleged trademark. Registrant admits the allegations in paragraph 14 of the Petition that there is similarity between Respondent’s Marks and Petitioner’s alleged trademark. Registrant denies all other allegations in paragraph 14 of the Petition.

15. Registrant denies the allegation set forth in paragraph 15 of the Petition that the consuming public is likely to believe that Registrant's goods are made, endorsed or sponsored by Petitioner. Registrant denies the allegation set forth in paragraph 15 of the Petition that the consuming public, upon seeing Registrant's Marks in association with Registrant's goods, is likely to believe that there is a trade connection or affiliation between Registrant and its goods, on the one hand, and Petitioner and its goods, on the other. Registrant admits the allegations in paragraph 15 of the Petition that no affiliation or sponsorship exists between Registrant and Petitioner. Registrant denies all other allegations in paragraph 15 of the Petition.

16. Registrant denies the allegations set forth in paragraph 16 of the Petition.

AFFIRMATIVE DEFENSES

In further answer to the Petition, Registrant asserts that:

First Affirmative Defense

17. Petitioner has failed to state any grounds upon which relief may be granted.

Second Affirmative Defense

18. Petitioner has failed to allege grounds sufficient to establish its standing to maintain the Petition.

Third Affirmative Defense

19. Petitioner is barred, in whole or in part, from relief by the doctrine of estoppel.

Fourth Affirmative Defense

20. Petitioner is barred, in whole or in part, from relief by the doctrine of laches.

Fifth Affirmative Defense

21. Petitioner is barred, in whole or in part, from relief by the doctrine of unclean hands.

Sixth Affirmative Defense

22. Petitioner is barred, in whole or in part, from relief by the doctrine of waiver.

Seventh Affirmative Defense

23. Petitioner's claims are barred because Petitioner is not the true owner of its alleged trademark as Registrant's rights to the BRIXTON Marks are senior to any rights Petitioner might have in Petitioner's alleged trademark and Registrant has priority of usage of BRIXTON as to the competitive market in issue.

Eighth Affirmative Defense

24. Petitioner is barred, in whole or in part, to the extent that there exists no likelihood of confusion that the consuming public will believe that Registrant's goods are made, endorsed or sponsored by Petitioner.

Ninth Affirmative Defense

25. Petitioner's rights in its alleged mark are limited in scope because there already exist a number of registrations for the same or similar marks by Registrant.

Tenth Affirmative Defense

26. Petitioner is barred, in whole or in part, from relief by the applicable statutes of limitation.

Eleventh Affirmative Defense

27. Petitioner is barred, in whole or in part, from relief by the doctrine of acquiescence.

Twelfth Affirmative Defense

28. Petitioner's claims are barred because Petitioner abandoned any rights it may have in Petitioner's alleged trademark.

Thirteenth Affirmative Defense

29. Petitioner's claims are barred because Registrant's conduct was privileged by the doctrine of fair competition.

Fourteenth Affirmative Defense

30. Petitioner's claims are barred because of Petitioner's misuse of its alleged trademark.

Fifteenth Affirmative Defense

31. Petitioner's claims are barred because Petitioner's alleged trademark has not acquired secondary meaning in that purchasers do not associate the alleged trademark with Petitioner alone.

32. Registrant hereby gives notice that it may reply on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

RELIEF REQUESTED

WHEREFORE, Registrant respectfully requests that the Petition be dismissed with prejudice.

Respectfully submitted,
FRIEDMAN STROFFE & GERARD, P.C.

Dated: April 9, 2010

By: Christa D. Perez
Christa D. Perez
Attorneys for Registrant

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Answer to Petition for Cancellation was served on Petitioner on April 9, 2010 via first class mail to:

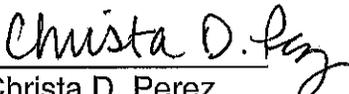
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Christa D. Perez
Attorney for Registrant

Certificate of Transmittal

I hereby certify that a true copy of the foregoing Answer to Petition for Cancellation is being filed electronically with the TTAB via ESTTA on this day, April 9, 2010.



Christa D. Perez
Attorney for Registrant