

ESTTA Tracking number: **ESTTA362221**

Filing date: **08/09/2010**

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

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|------------------------|--|
| Proceeding | 92052657 |
| Party | Defendant Frosty King, Inc. |
| Correspondence Address | FROSTY KING, INC. 204 RANDEL AVENUE OAK HILL, FL 32759 UNITED STATES |
| Submission | Answer |
| Filer's Name | Christopher J. Dugger |
| Filer's e-mail | cdugger@kleinbergler.com, ltajos@kleinbergler.com, trademarks@kleinbergler.com |
| Signature | /christopher j dugger/ |
| Date | 08/09/2010 |
| Attachments | Frosty_King_Answer.pdf (5 pages)(679292 bytes) Frosty_King_Answer(uns scanned).pdf (5 pages)(18726 bytes) |

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

Frosty King Inc., a Nevada Corporation,

Petitioner,

v.

Frosty King, Inc., a Florida Corporation,

Respondent.

Cancellation No. 92052657

Mark: Frosty King

Registration No. 3,537,613

ANSWER TO PETITION TO CANCEL

Respondent, Frosty King, Inc., a Florida Corporation, (hereinafter “Respondent”) in answer to the Petition to Cancel filed by Frosty King Inc., a Nevada Corporation (hereinafter “Petitioner”) against the Trademark, Registration No. 3,537,613, answers, denies and avers as follows:

With regard to the introductory paragraph, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegation regarding Petitioner’s citizenship and therefore denies those allegations, admits that Petitioner has filed the instant Petition to Cancel, and otherwise denies the remaining allegations in the introductory paragraph.

1. In answer to paragraph 1 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

2. Admitted.

3. In answer to paragraph 3 of the Petition to Cancel, Respondent denies alleging a first use in commerce of February 1, 2008. Respondent admits alleging a first

use in commerce no later than February 1, 2008. Respondent admits the remaining allegations of this paragraph.

4. In answer to paragraph 4 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

5. In answer to paragraph 5 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

6. In answer to paragraph 6 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

7. In answer to paragraph 7 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

8. Denied.

9. In answer to paragraph 9 of the Petition to Cancel, Respondent admits that it filed application papers pursuant to § 1001 of Title 18 of the United States Code. Respondent admits that it stated that, to the best of its knowledge and belief, "no other person, firm corporation or association has the right to use said mark in commerce either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods or services of such other person, to cause confusion, to cause mistake or to deceive." Respondent denies all other allegations of paragraph 9.

10. In answer to paragraph 10 of the Petition to Cancel, Respondent denies making any statement in any trademark application with the knowledge and belief that the statement was untrue. Respondent admits that its statements made in trademark applications were made with the intent to achieve registration of its trademark with the United States Patent and Trademark Office ("USPTO"). Respondent denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10 and therefore denies those allegations.

11. In answer to paragraph 11 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

12. In answer to paragraph 12 of the Petition to Cancel, Respondent admits to corresponding with some restaurants operating under the name FROSTY KING in California. Respondent denies the remaining allegations of paragraph 12.

13. In answer to paragraph 13 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations. Furthermore, Respondent is currently developing expansion plans of its own, including regional and/or nationwide franchising and marketing plans. Respondent is formulating potential franchise agreements and partnerships to expand its market. Moreover, Respondent is reviewing the markets in various regions of the United States for market opportunities and targeted expansion. Respondent is also evaluating real estate for expansion locations and seeking potential partners and franchisees to finance, own and/or operate additional business locations using Respondent's Registration.

14. Denied.

15. In answer to paragraph 15 of the Petition to Cancel, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

FIRST AFFIRMATIVE DEFENSE

16. Petitioner's Petition to Cancel fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

17. Petitioner's claims are barred by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

18. Petitioner's claims are barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

19. Petitioner's claims are barred by the doctrine of unclean hands for intentionally infringing on registrant's prior statutory and common law rights to the Frosty King Trademark, Registration No. 3,537,613.

WHEREFORE, Respondent respectfully requests that the Board dismiss this cancellation proceeding in its entirety with prejudice.

KLEINBERG & LERNER, LLP

Dated:

By: /michael hurey/
Michael Hurey
Christopher J. Dugger
Attorney for Respondent
1875 Century Park East, Suite 1150
Los Angeles, CA 90067

CERTIFICATE OF TRANSMITTAL

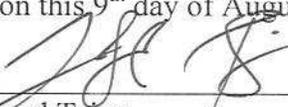
I hereby certify that a true copy of the foregoing ANSWER TO PETITION TO CANCEL is being filed electronically with the TTAB via ESTTA on this day, August 9, 2010.



Lloyd Tajos

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO PETITION TO CANCEL was served by mail upon James M. Duncan of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, P.O. Box 11172, Bakersfield, CA 93389, as attorneys for Petitioner Frost King Inc. on this 9th day of August, 2010.



Lloyd Tajos

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KLEINBERG & LERNER, LLP

Dated:

By: /michael hurey/
Michael Hurey
Christopher J. Dugger
Attorney for Respondent
1875 Century Park East, Suite 1150
Los Angeles, CA 90067

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Lloyd Tajos