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

Proceeding	92053149
Party	Defendant Apple Inc.
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Submission	Answer
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Date	01/24/2011
Attachments	Answer to Petition for Cancellation.pdf (5 pages)(189558 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Reg. No.3,823,241
Mark: **IPOD**
Registered: July 20, 2010

PHILLIPS-VAN HEUSEN CORPORATION, Petitioner, v. APPLE INC., Registrant.	Cancellation No.: 92053149 **ANSWER TO PETITION FOR CANCELLATION**

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Madam:

Pursuant to 37 C.F.R. §§ 2.114 and 2.116(a), and Fed. R. Civ. P. 8, for its Answer to the Petition To Cancel (the "Petition"), Registrant Apple Inc. ("Apple") submits the following:

Introductory Paragraph

Apple admits that it is a corporation of the State of California located at 1 Infinite Loop, Cupertino, California 95014, that it is the owner of U.S. Registration No. 3,823,241 for the mark IPOD for "clothing, namely, sweaters, sweatshirts, jogging suits, jackets, and coats; footwear" (collectively, "Apple's Goods") in International Class 25 (hereinafter, the "Registration"), and that the Registration issued on July 20, 2010. Apple denies that Petitioner Phillips-Van Heusen Corporation ("Petitioner") has been or will continue to be, damaged by the Registration. Apple is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of the unnumbered introductory paragraph of the Petition and on that basis denies them.

Petitioner

1. Apple admits, on information and belief, that Petitioner sells and markets a variety of goods, including clothing. Apple is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 1 of the Petition and on that basis denies them.

2. Apple is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Petition, and on that basis denies the allegations.

3. In response to paragraph 3 of the Petition, Apple admits that U.S. Patent and Trademark Office online records purport to show that Petitioner is the owner of the U.S. Registrations referenced in paragraph 3 of the Petition and that the registrations issued on the dates as listed in paragraph 3 of the Petition. Except as expressly admitted, Apple is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Petition and on that basis denies them.

Registrant

4. Apple admits the allegations in paragraph 4 of the Petition.

5. Apple admits the allegations in paragraph 5 of the Petition.

6. In response to paragraph 6 of the Petition, Apple admits that it commenced use of the IPOD Mark in connection with Apple's Goods at least as early as November, 2005. Apple is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 6 of the Petition and on that basis denies them.

Likelihood of Confusion

7. Apple incorporates by reference its answers to paragraphs 1 through 6 above.

8. Apple is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Petition, and on that basis denies the allegations.

9. Apple is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Petition, and on that basis denies the allegations.

10. Apple denies the allegations of paragraph 10 of the Petition.

Dilution

11. Apple incorporates by reference its answers to paragraphs 1 through 10 above.

12. Apple denies the allegations of paragraph 12 of the Petition.

Nonuse and Void Ab Initio

13. Apple incorporates by reference its answers to paragraphs 1 through 12 above.

14. In response to paragraph 14 of the Petition, Apple admits that it submitted a Statement of Use on May 6, 2010, confirming that it was using the IPOD Mark "in commerce on or in connection with the following goods or services listed in either the application or Notice of Allowance or as subsequently modified for this specific class: Clothing, namely, sweaters, sweatshirts, jogging suits, jackets, and coats; footwear."

15. Apple denies the allegations of the first sentence of paragraph 15 of the Petition. Apple is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 of the Petition concerning Petitioner's investigation and alleged findings, and on that basis denies the allegations.

16. The allegations of Paragraph 16 of the Complaint are statements of law as to which no response is required. Apple admits that its application for the IPOD Mark was made pursuant to Section 1(b).

17. Apple denies the allegations of paragraph 17 of the Petition.

Request for Relief

Apple admits that Petitioner is seeking cancellation of the Registration. Apple denies that Petitioner is entitled to such relief.

FIRST AFFIRMATIVE DEFENSE

Petitioner's request for relief is barred by the equitable doctrines and affirmative defenses of waiver, estoppel and laches, as applicable.

SECOND AFFIRMATIVE DEFENSE

Petitioner's request for relief fails to state a claim upon which relief can be granted.

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

Respectfully submitted,

KILPATRICK TOWNSEND AND STOCKTON LLP

Dated: January 24, 2011 By: _____

Margaret C. McHugh
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CERTIFICATE OF SERVICE

On January 24, 2011, I served the foregoing **ANSWER TO PETITION FOR CANCELLATION** on the party(ies) in said action by depositing a true copy thereof with the United States Postal Service as first class mail, postage prepaid, at San Francisco, California, enclosed in a sealed envelope addressed as follows:

Floyd A. Mandell
Katten Muchin Rosenman LLP
525 W Monroe Street
Chicago, IL 60661

Dated: January 24, 2011

By: Masha M. Martinenko
Masha M. Martinenko

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