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

Proceeding	92053547
Party	Defendant Full Throttle Films, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VER SALES, INC. Petitioner, v. FULL THROTTLE FILMS, INC. Registrant.	)	Cancellation Proceeding No. 92053547

FULL THROTTLE FILMS, INC.'S ANSWER TO FIRST AMENDED AND RESTATED PETITION FOR CANCELLATION

Registrant Full Throttle Films, Inc. ("Registrant") hereby answers the First Amended and Restated Petition for Cancellation (the "First Amended Petition") filed in the above-referenced proceeding by Petitioner Ver Sales, Inc. ("Petitioner") and alleges that the First Amended Petition should be dismissed.

In response to Petitioner's allegations, Registrant alleges as follows:

1. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the First Amended Petition and therefore denies the allegations on that basis.
2. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the First Amended Petition and therefore denies the allegations on that basis.

3. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 3 of the First Amended Petition and therefore denies the allegations on that basis.

4. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 4 of the First Amended Petition and therefore denies the allegations on that basis.

5. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 5 of the First Amended Petition and therefore denies the allegations on that basis.

6. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 6 of the First Amended Petition and therefore denies the allegations on that basis.

7. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 7 of the First Amended Petition and therefore denies the allegations on that basis.

8. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 8 of the First Amended Petition and therefore denies the allegations on that basis.

9. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 9 of the First Amended Petition and therefore denies the allegations on that basis.

10. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 10 of the First Amended Petition and therefore denies the allegations on that basis.

11. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 11 of the First Amended Petition and therefore denies the allegations on that basis.

12. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 12 of the First Amended Petition and therefore denies the allegations on that basis.

13. Registrant admits the allegation contained in Paragraph 13 of the First Amended Petition that it obtained United States Trademark Registration No. 3025887 for the VER mark for rental of equipment, namely, broadcast equipment in Class 038 and rental of equipment, namely, audio, video and camera equipment in Class 041, that the registration issued on December 13, 2005 and is now incontestable, that Registrant claims a first use date of September 1990 for both classes of services and that a copy of Registrant's Certificate of Registration is attached to the First Amended Petition as Exhibit C. Registrant denies the remaining allegations of Paragraph 13 of the First Amended Petition.

14. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 14 of the First Amended Petition and therefore denies the allegations on that basis.

15. In response to Paragraph 15 of the First Amended Petition, Registrant admits that there has been a de minimis number of instances in which individuals have carelessly

sent communications to Registrant that were intended for Petitioner. However, Registrant has forwarded any such communications to Petitioner and/or has advised the senders of such communications to correct their records. Registrant also denies that there has been any "actual confusion" resulting from any similarity between the mark shown in Registrant's incontestable registration covering rental of broadcast, audio, video or camera equipment and any mark allegedly owned by Petitioner, which never has rented or sold any of the equipment listed in Registrant's registration. Moreover, Registrant and Petitioner provide different services and products to different clients. Registrant denies the remaining allegations of Paragraph 15 of the First Amended Petition.

16. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 16 of the First Amended Petition and therefore denies the allegations on that basis.

17. In response to Paragraph 17 of the First Amended Petition, Registrant denies that there has been any "actual confusion" resulting from any similarity between the parties marks and Registrant affirmatively alleges that it has forwarded any such communications intended for Petitioner to Petitioner and/or has advised the senders of such communications to correct their records. Registrant is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 17 of the First Amended Petition and therefore denies the allegations on that basis.

18. Registrant denies the allegations contained in paragraph 18 of the First Amended Petition.

19. Registrant denies the allegations contained in paragraph 19 of the First Amended Petition.

20. Registrant admits the allegations contained in paragraph 20 of the First Amended Petition.

21. In response to paragraph 21 of the First Amended Petition, Registrant admits that it has used the marks "VIDEO EQUIPMENT RENTALS" and "VER VIDEO EQUIPMENT RENTALS" and Registrant denies the remaining allegations in this paragraph 21 of the First Amended Petition.

22. Registrant denies the allegations contained in paragraph 22 of the First Amended Petition.

23. Registrant denies the allegations contained in paragraph 23 of the First Amended Petition.

24. Registrant denies the allegations contained in paragraph 24 of the First Amended Petition.

25. Registrant denies the allegations contained in paragraph 25 of the First Amended Petition.

26. Registrant denies the allegations contained in paragraph 26 of the First Amended Petition.

27. Registrant denies the allegations contained in paragraph 27 of the First Amended Petition.

28. Registrant denies the allegations contained in paragraph 28 of the First Amended Petition.

29. Registrant denies the allegations contained in paragraph 29 of the First Amended Petition.

30. Registrant denies the allegations contained in paragraph 30 of the First Amended Petition.

31. Registrant denies the allegations contained in paragraph 31 of the First Amended Petition.

32. Registrant denies the allegations contained in paragraph 32 of the First Amended Petition.

33. Registrant denies the allegations contained in paragraph 33 of the First Amended Petition.

34. In response to Paragraph 34 of the First Amended Petition, Registrant admits that Petitioner has made a groundless allegation of fraud and that Registrant's application for the subject registration contained the truthful and mandatory statement that, "… to the best of his/her knowledge and belief no other person, firm corporation or association has the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used in connection with the goods/services of such other person, firm, corporation, or association to cause confusion, or to cause mistake, or to deceive …" Registrant denies the remaining allegations of Paragraph 34 of the First Amended Petition.

35. In response to Paragraph 35 of the First Amended Petition, Registrant admits that Scott Dundee signed the subject application for registration and denies the remaining allegations of Paragraph 35 of the First Amended Petition.

36. Registrant denies the allegations contained in paragraph 36 of the First Amended Petition.

37. Registrant denies the allegations contained in paragraph 37 of the First Amended Petition.

38. Registrant denies the allegations contained in paragraph 38 of the First Amended Petition.

39. Registrant denies the allegations contained in paragraph 39 of the First Amended Petition.

40. Registrant denies the allegations contained in paragraph 40 of the First Amended Petition.

41. Registrant denies the allegations contained in paragraph 41 of the First Amended Petition.

42. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 42 of the First Amended Petition and therefore denies the allegations on that basis.

43. In response to Paragraph 43 of the First Amended Petition, Registrant alleges that it did not make any misrepresentation to the Trademark Office and therefore denies the allegations of Paragraph 43 on that basis.

44. Registrant denies the allegations contained in paragraph 44 of the First Amended Petition.

45. Registrant denies the allegations contained in paragraph 45 of the First Amended Petition.

46. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 46 of the First Amended Petition and therefore denies the allegations on that basis.

47. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 47 of the First Amended Petition and therefore denies the allegations on that basis.

48. Registrant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 48 of the First Amended Petition and therefore denies the allegations on that basis.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred by the fact that the Petition has failed to state a claim on which relief may be granted.
2. Petitioner's claims are barred by the fact that Petitioner lacks standing in that the PTO has found that the PTO has not cited Registrant's mark as a bar to registration of Petitioner's alleged mark.
3. Petitioner's claims are barred by the doctrine of unclean hands in that Petitioner has engaged inequitable conduct directly related to the subject matter of this proceeding.
4. Petitioner's claims are barred by the doctrine of acquiescence.
5. Petitioner's claims are barred by the doctrine of estoppel.
6. Petitioner's claims are barred by the doctrine of laches.
7. Petitioner's allegation of priority and confusion is barred by the fact that Registrant's registration is incontestable.

8. Petitioner's allegation of dilution through blurring is barred by the fact that Registrant's registration is incontestable.

9. Petitioner's allegation of fraud is barred by the fact that there is no overlap in the services of Petitioner or the services listed in Petitioner's applications and the services listed in Registrant's registration.

10. Petitioner's bare allegation of false association or misrepresentation as to source is barred by the fact that the number of communications intended for Petitioner has been de minimis and all such communications have been forwarded to Petitioner.

Respectfully submitted,

FULL THROTTLE FILMS, INC.

By _____

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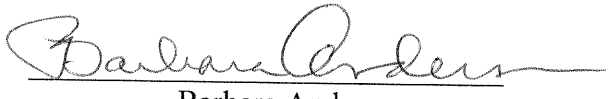
(213) 629-1400

Dated: March 2, 2012

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing FULL THROTTLE FILMS, INC.'S ANSWER TO FIRST AMENDED AND RESTATED PETITION FOR CANCELLATION is being served upon Petitioner's Counsel, Jessie K. Reider, Buchaalter Nemer, 1000 Wilshire Blvd., Suite 1500, Los Angeles, CA 90017 by first class mail, postage prepaid, this 2nd day of March, 2012.



Barbara Anderson