

ESTTA Tracking number: **ESTTA411893**

Filing date: **05/31/2011**

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

Proceeding	92053911
Party	Defendant Ovation, Inc.
Correspondence Address	OVATION INC 3810 BEDFORD AVE, SUITE 200 NASHVILLE, TN 37215 UNITED STATES
Submission	Answer
Filer's Name	Paige Mills
Filer's e-mail	pmills@bassberry.com
Signature	/paige mills/
Date	05/31/2011
Attachments	0350025.pdf ( 6 pages )(16037 bytes )

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

In re the matter of Application  
Serial No.: 77/350025

Mark: **OVATION**

Published in the Official Gazette  
on August 18, 2009

_____	)	
OVATION, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	ANSWER
	)	Cancellation No.:
	)	92053911
OVATION, INC.	)	
	)	
Registrant.	)	
_____	)	

**ANSWER**

Registrant, Ovation, Inc. (“Registrant”) answers the Petition for Cancellation (the “Petition”) of Ovation, LLC (“Petitioner”), as follows:

1. Registrant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 of the Petition and, on that basis, denies generally and specifically each and all other allegations.

2. Admitted.

3. Admitted.

4. Denied.

5. Registrant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 5 of the Petition and, on that basis, denies generally and specifically each and all other allegations.

6. Denied.

7. Registrant admits that Patent and Trademark Office (“PTO”) records reflect that Petitioner filed an application on the day in question, but Registrant denies that any inference can be drawn from the language in Petitioner’s application. Registrant also states that Petitioner’s application speaks for itself.

8. Registrant admits that PTO records reflect that Petitioner filed an application on the day in question, but Registrant denies that any inference can be drawn from the language in Petitioner’s application. Registrant also states that Petitioner’s application speaks for itself.

9. Registrant admits that the PTO records reflect that a Section 2(d) refusal was issued on Petitioner’s marks. Registrant also states that the office action speaks for itself.

10. Registrant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 10 of the Petition and, on that basis, denies generally and specifically each and all other allegations.

11. Registrant is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 11 of the Petition and, on that basis, denies generally and specifically each and all other allegations.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

Registrant denies that Petitioner is entitled to any relief, including the relief sought in the WHEREFORE clause of its Petition.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

16. Petitioner is not entitled to seek cancellation of Registrant's marks to the extent that such registrations contain goods and services other than "cable television broadcasting services." In short, the Petitioner's Petition cannot exceed the scope of its application.

#### **SECOND AFFIRMATIVE DEFENSE**

17. The Petition fails to state a sufficient basis on which to cancel the registration of Registrant's mark and fails to state a claim upon which relief may be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

18. The Petition is barred by the equitable doctrines of laches, acquiescence waiver and/or estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

19. Upon information and belief, Petitioner has not continuously used its claimed marks for all goods and services named in the Petition since 1995.

**FIFTH AFFIRMATIVE DEFENSE**

20. Petitioner cannot establish nationwide use of its claimed marks prior to the filing date of Registrant's Mark.

**SIXTH AFFIRMATIVE DEFENSE**

21. Petitioner cannot establish use in commerce for the indicated goods and services that predates Registrant's use.

**SEVENTH AFFIRMATIVE DEFENSE**

22. Registrant asserts that its existing registrations are valid, proper, and controlling of the parties' rights in this matter. In the alternative, should Petitioner be able to establish a date of first use that predates Registrant's date of first use, as the first to register, Registrant is entitled to maintain its nationwide rights created by its registration, subject only to the territory that Petitioner is able to establish existed at the time of Registrant's application.

Registrant reserves the right to add additional affirmative defenses and other claims as discovery develops.

**PRAYER FOR RELIEF**

WHEREFORE, Registrant contends the Petition is groundless and requests judgment denying the Petition and this proceeding in its entirety with prejudice.

DATED: May 31, 2011.

Respectfully submitted,

BASS, BERRY & SIMS PLC

By: /paige mills/

Paige W. Mills

Ryann Schneider

Alison Grippo

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, Tennessee 37238-3001

Telephone: (615) 742-6200

Facsimile: (615) 742-0410

*Attorney for Defendant,*

*Ovation, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and complete copy of the foregoing Answer was served on Elise Tenen-Aoki by mailing said copy on May 31, 2011, by First-Class Mail, postage prepaid to:

Elise Tenen-Aoki  
Greenberg Traurig LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, CA 90405

DATED this 31<sup>st</sup> day of May, 2011.

\_\_\_\_\_  
*/paige mills/*

9565666.1