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

Proceeding	92055094
Party	Plaintiff Swig, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,885,993.
For the mark SWIG.
Registered December 7, 2010.

SWIG, INC.

Petitioner,

Cancellation No. 92055094

v.

TEMPERANCE DISTILLING
COMPANY, INC.

Registrant.

**PETITIONER'S ANSWER AND AFFIRMATIVE DEFENSES TO REGISTRANT'S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Now comes Swig, Inc. ("Petitioner") and hereby answers Registrant's Counterclaims.

ANSWER TO COUNTERCLAIMS

1. Petitioner is without sufficient knowledge to admit or deny the allegations in the introductory paragraph of Registrant's Counterclaims; therefore, those allegations are denied.

2. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 1 of Registrant's Counterclaims; therefore, these allegations are denied.

3. Petitioner denies the allegations in paragraph 2 of Registrant's Counterclaims.

4. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 3 of Registrant's Counterclaims; therefore, these allegations are denied. However, Petitioner admits that according to the records of the USPTO, Registrant filed U.S. Application Serial No. 85/017,111 on April 19, 2010 for SWIG.

5. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 4 of Registrant's Counterclaims.

6. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 5 of Registrant's Counterclaims; therefore, these allegations are denied. However, Petitioner admits that according to the records of the USPTO, U.S. Application Serial No. 85/017,111 for the mark SWIG was published for opposition on September 21, 2010. Petitioner admits it did not oppose registration until the present Petition for Cancellation was filed.

7. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 6 of Registrant's Counterclaims; therefore, these allegations are denied. However, Petitioner admits that according to the records of the USPTO, Petitioner's SWIG mark issued as U.S. Registration No. 3.995.003 on December 7, 2010.

8. Petitioner admits the allegations in paragraph 7 of Registrant's Counterclaims.

9. With regard to the allegations in paragraph 8, Petitioner is without sufficient information to admit or deny what Registrant believes; therefore, the allegations in paragraph 8 characterizing the Registrant's belief are denied. Petitioner admits that Registrant has petitioned to cancel U.S. Registration No. 3,416,488. However, Petitioner denies that Registrant's Petition to Cancel has merit.

10. Petitioner admits that printouts from the internet are attached as Exhibit 1 to Registrant's Counterclaims. Petitioner further admits that none of the restaurants/cocktail lounges in the printouts appear to be Petitioner's authorized licensee. Petitioner denies the remaining allegations contained in paragraph 9 of Registrant's Counterclaims.

11. Petitioner denies the allegations in paragraph 10 of Registrant's Counterclaims.

12. Petitioner admits the allegations in paragraph 11 of Registrant's Counterclaims.

13. Petitioner denies the allegations in paragraph 12 of Registrant's Counterclaims.

14. Petitioner denies the allegations in paragraph 13 of Registrant's Counterclaims.

15. Petitioner denies the allegations in paragraph 14 of Registrant's Counterclaims.

16. Petitioner denies the allegations in paragraph 15 of Registrant's Counterclaims.

17. Petitioner admits the allegations in paragraph 16 of Registrant's Counterclaims.

18. With regard to the allegations in paragraph 17, Petitioner is without sufficient information to admit or deny what Registrant believes; therefore, the allegations in paragraph 8 characterizing the Registrant's belief are denied. Petitioner admits that Registrant has petitioned to cancel U.S. Registration No. 2,243,360. However, Petitioner denies that Registrant's Petition to Cancel has merit.

19. Petitioner admits that printouts from the internet are attached as Exhibit 1 to Registrant's Counterclaims. Petitioner further admits that none of the restaurants/cocktail lounges in the printouts appear to be Petitioner's authorized licensee. Petitioner denies the remaining allegations contained in paragraph 18 of Registrant's Counterclaims.

20. Petitioner denies the allegations in paragraph 19 of Registrant's Answer, Affirmative Defenses, and Counterclaims.

21. Petitioner admits the allegations in paragraph 20 of Registrant's Counterclaims.

22. Petitioner denies the allegations in paragraph 21 of Registrant's Counterclaims.

23. Petitioner denies the allegations in paragraph 22 of Registrant's Counterclaims.

24. Petitioner denies the allegations in paragraph 23 of Registrant's Counterclaims.

25. Petitioner denies the allegations in paragraph 24 of Registrant's Counterclaims.

26. Petitioner admits the allegations in paragraph 25 of Registrant's Counterclaims.

27. With regard to the allegations in paragraph 26, Petitioner is without sufficient information to admit or deny what Registrant believes; therefore, the allegations in paragraph 8 characterizing the Registrant's belief are denied. Petitioner admits that Registrant has petitioned

to cancel U.S. Registration No. 3,836,245. However, Petitioner denies that Registrant's Petition to Cancel has merit.

28. Petitioner admits that printouts from the internet are attached as Exhibit 1 to Registrant's Counterclaims. Petitioner further admits that none of the restaurants/cocktail lounges in the printouts appear to be Petitioner's authorized licensee. Petitioner denies the remaining allegations contained in paragraph 27 of Registrant's Counterclaims.

29. Petitioner denies the allegations in paragraph 28 of Registrant's Counterclaims.

30. Petitioner admits the allegations in paragraph 29 of Registrant's Counterclaims.

31. Petitioner denies the allegations in paragraph 30 of Registrant's Counterclaims.

32. Petitioner denies the allegations in paragraph 31 of Registrant's Counterclaims.

33. Petitioner denies the allegations in paragraph 32 of Registrant's Counterclaims.

34. Petitioner denies the allegations in paragraph 33 of Registrant's Counterclaims.

35. Petitioner admits the allegations in paragraph 34 of Registrant's Counterclaims.

36. With regard to the allegations in paragraph 35, Petitioner is without sufficient information to admit or deny what Registrant believes; therefore, the allegations in paragraph 8 characterizing the Registrant's belief are denied. Petitioner admits that Registrant has petitioned to cancel U.S. Registration No. 1,839,570. However, Petitioner denies that Registrant's Petition to Cancel has merit.

37. The assignment referenced in paragraph 36 of Registrant's Counterclaims speaks for itself. Petitioner admits that an assignment executed on September 3, 1998 was recorded with the United States Patent and Trademark Office on September 24, 1998.

38. The allegations contained in paragraph 37 of Registrant's Counterclaims are legal conclusions to which no response is required. To the extent a response is required, Petitioner states that the 1998 assignment speaks for itself.

39. With regard to paragraph 38 of Registrant's Counterclaims, Petitioner admits that according to the records of the United States Patent and Trademark Office, Mr. Wise filed Section 8 and 15 Affidavits on May 30, 2000 in connection with the '570 Registration.

40. With regard to the allegations contained in paragraph 39 of Registrant's Counterclaims, Petitioner denies that there is no record of a Section 8 affidavit filed by Petitioner in connection with the '570 Registration in the U.S. Patent and Trademark Office's database. However, Petitioner admits that there is no record of a Section 15 affidavit filed by Petitioner in connection with the '570 Registration in the U.S. Patent and Trademark Office's database.

41. With regard to paragraph 40 of Registrant's Counterclaims, Petitioner denies that it did not file a Section 8 affidavit in connection with the '570 Registration. However, Petitioner admits that it did not file a Section 15 affidavit in connection with the '570 Registration.

42. Petitioner admits the allegations contained in paragraph 41 of Registrant's Counterclaims.

43. With regard to paragraph 42 of Registrant's Counterclaims, Petitioner admits that according to the records of the United States Patent and Trademark Office available at www.uspto.gov, there is no record of a Section 9 affidavit filed by Mr. Wise. However, Petitioner denies that there is no record of a Section 8 affidavit filed by Mr. Wise in connection with the '570 Registration in the U.S. Patent and Trademark Office's database.

44. Petitioner is without sufficient knowledge to admit or deny the allegations in paragraph 43 of Registrant's Counterclaims; therefore, these allegations are denied.

45. The allegations in paragraph 44 are legal conclusions to which no response is required. To the extent a response is required, Petitioner denies the allegations in paragraph 44 of Registrant's Counterclaims.

46. The allegations in paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Petitioner denies the allegations in paragraph 45 of Registrant's Counterclaims.

47. Petitioner denies the allegations in paragraph 46 of Registrant's Counterclaims.

AFFIRMATIVE DEFENSES

48. Registrant's counterclaims are barred by the doctrine of laches.

49. Registrant's counterclaims are barred by the doctrine of acquiescence.

50. Registrant's counterclaims are barred by the doctrine of estoppel.

51. With regard to Claim Four of Registrant's Counterclaims, the Registrant has failed to state claims on which relief may be granted under 15 U.S.C. § 1064(3).

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Registrant's petition to cancel U.S. Registration No. 3,416,488 be dismissed with prejudice in its entirety. This Answer is being filed electronically. The Commissioner is authorized to draw upon the Deposit Account of Gunn & Lee, P.C., Account No. 500808, for any outstanding fees, if any, relating to this Answer.

Date: May 2, 2012

Respectfully submitted,

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By: */John C. Cave/*
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Texas Bar No. 00783812

ATTORNEYS FOR PETITIONER

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a true and correct copy of the foregoing Petitioner's Answer and Affirmative Defenses to Registrant's Answer, Affirmative Defenses and Counterclaims is being filed with the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, via electronic transmission on this 2nd day of May, 2012.

/John C. Cave/

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioner's Answer and Affirmative Defenses to Registrant's Answer, Affirmative Defenses and Counterclaims is being served upon Registrant by causing a true and correct copy thereof to be deposited with the United States Postal Service as Express Mail on this 2nd day of May, 2012, in an envelope addressed to the attorney of record listed for U.S. Trademark Registration No. 3,885,993:

Richard S. MacMillan
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Toledo, Ohio 43604

/John C. Cave/