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

Proceeding	92055451
Party	Defendant Kevin Hurley
Correspondence Address	PHILIP A ALLEN III GARBETT STIPHANY ALLEN & ROZA PA BRICKELL BAYVIEW CENTRE SUITE 3100, 80 SW 8TH STREET MIAMI, FL 33130 UNITED STATES PAllen@gsarlaw.com
Submission	Answer
Filer's Name	Philip A. Allen, III
Filer's e-mail	pallen@gsarlaw.com
Signature	/philip a. allen/
Date	06/29/2012
Attachments	2012-06-29 Answer to Petition to Cancel.pdf (4 pages)(189068 bytes)

iStompx.com web site has been in continuous operation since approximately February 10, 2012. These web sites include the specimen submitted in support of Registrants' Statement of Use, consisting of an image of a product meeting the alleged description of the goods, and bearing the ISTOMP mark. Applicants developed a functioning model of the product and, through their affiliated company, were and are prepared to fill orders for a custom version of the product. Applicants have been unable to raise the capital necessary to bring a production model of the product to market, despite diligent effort and their expenditures of approximately \$35,000, plus investments by others exceeding \$45,000.

5. Denied. Registrants incorporate their answer to paragraph 4.

6. Denied. Registrants incorporate their answer to paragraph 4.

7. Denied. Registrants incorporate their answer to paragraph 4.

8. Denied. Registrants incorporate their answer to paragraph 4. Registrants admit that they have not sold a product meeting the description of the goods but they deny that they knowingly or intentionally engaged in any false or misleading conduct in connection with the procurement of the registration.

9. Admitted.

10. Registrants admit that their attorney of record submitted the Statement of Use and that the Trademark Office granted the registration. Registrants deny that the submission of the specimen rendered the statement materially false. Registrants also deny that the statement was made with the intent to defraud.

11. Denied. Registrants incorporate their answer to paragraph 4.

12. Denied. Registrants incorporate their answer to paragraph 4.

13. Denied. Registrants incorporate their answer to paragraph 4.

14. Registrants admit that the date of first use communicated to the Trademark Office on September 16, 2008 inadvertently described the date of first use as April 1, 2007 when, in fact, the date of first use was intended to be April 1, 2008, a date when the iStomp.com web site was operational. This appears to have been either a clerical error or a miscommunication between Registrants and their counsel who prepared and filed the Statement of Use. Registrants incorporate their answer to paragraph. 4. Registrants deny that the Statement of Use was made knowingly and intentionally to mislead the Trademark Office.

15. Denied.

16. Denied.

17. Registrants admit that the Trademark Office relied on the Statement of Use but deny that it was fraudulent.

18. Denied.

19. Denied.

20. Denied.

DEFENSES

Unclean Hands

21. Petitioner is not entitled to the equitable remedy of cancelation under the doctrine of unclean hands. In connection with both its misapplications for the marks ISTOMP and DIGITECH ISTOMP, Petitioner, through its counsel, represented under oath that, to the best of its knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.

22. At the time the oaths were signed, Registrants had been using the ISTOMP mark in commerce by offering for the goods for sale in connection with a web-site display that associated the mark with those goods.

23. At the time the oaths were signed, Petitioner knew of the Registrants' rights in the mark which were superior because of a date of use that preceded Petitioner's.

24. At the time the oaths were signed, Petitioner believed that its adoption and use of the marks set forth in its applications would cause confusion or it had not reasonable basis for believing otherwise.

25. Petitioner, in failing to disclose the prior Registrant's prior registration of the ISTOMP mark, intended to procure registrations to which it was not entitled.

WHEREFORE, Registrants pray for judgment denying the Petition.

Respectfully submitted,

/Philip A. Allen, III/
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO PETITION TO CANCAL was served by First Class Mail upon Farah P. Bhatti, Attorney for Petitioner, Buchalter Nemer, 18400 Von Karman Avenue, Suite 800, Irvine, California 92612, this 29th day of June, 2010.

/Philip A. Allen, III/
Philip A. Allen, III