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

Proceeding	92055519
Party	Defendant BALORU S.A.
Correspondence Address	THOMAS M WILENTZ THOMAS M WILENTZ PLLC 75 SOUTH BROADWAY, 4TH FLOOR WHITE PLAINS, NY 10601 UNITED STATES
Submission	Answer
Filer's Name	Thomas M. Wilentz
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Date	06/04/2012
Attachments	Answer Served & filed June 4.pdf (7 pages)(40990 bytes)

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

ECUABEVERAGE CORPORATION, Petitioner, -v- BALORU S.A., Respondent	Cancellation No. 92055519

ANSWER TO PETITION FOR CANCELLATION

BALORU S.A. (hereinafter "Respondent"), by and through its undersigned attorney Thomas M. Wilentz, Attorney at Law, PLLC, as and for its Answer to the Petition for Cancellation herein alleges as follows:

1. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegation contained in Paragraph 1 of the Petition for Cancellation, and, therefore, denies same.

2. Respondent admits the allegations contained in Paragraph 2 of the Petition for Cancellation.

3. Respondent admits that it is a manufacturer of concentrates used for making soft drinks that are sold in the United States. Exhibit 1 attached to Petitioner's Petition For Cancellation is a writing that speaks for itself and any characterization of it is therefore expressly denied by Respondent.

4. Respondent denies the allegation contained in Paragraph 4 of the Petition for Cancellation. Exhibit 1 attached to Petitioner's Petition For Cancellation is a writing that speaks for itself and any characterization of it is therefore expressly denied by Respondent.

5. Respondent admits that Brooklyn Bottling of Milton, New York, Inc. is a U.S. distributor of soft drinks made from concentrate or syrup manufactured by Respondent. Respondent denies the remaining allegations contained in Paragraph 5 of the Petition for Cancellation.

6. Petitioner's statement that Brooklyn Bottling is a "related company" of Baloru under §5 of the Trademark Act, 15 U.S.C. §1055 sets forth conclusions of fact and/or law for which no responsive pleading is required, and to the extent that a responsive pleading is required Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation and therefore denies same. The remainder of the allegations contained in Paragraph 6 of the Petition For Cancellation assume facts that have not been established, and Respondent therefore expressly denies the remaining allegations in Paragraph 6 of the Petition For Cancellation.

7. Respondent admits the allegation contained in Paragraph 7 of the Petition for Cancellation.

8. The allegations contained in Paragraph 8 set forth conclusions of fact and/or law for which no responsive pleading is required. To the extent that a responsive pleading is required, Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, and therefore DENIES the

same.

9. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegation contained in Paragraph 9 of the Petition for Cancellation, and, therefore, denies same.

10. Respondent denies the allegations contained in Paragraph 10 of the Petition for Cancellation.

With regard to Claim I

11. Respondent incorporates paragraphs 1 through 10 inclusive of this Answer as if such paragraphs were fully set forth herein at length.

12. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegations contained in Paragraph 12 of the Petition for Cancellation, and, therefore, denies same.

13. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegation contained in Paragraph 13 of the Petition for Cancellation, and, therefore, denies same.

14. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegation contained in Paragraph 14 of the Petition for Cancellation, and, therefore, denies same.

15. Respondent denies the allegation contained in Paragraph 15 of the Petition for Cancellation.

16. Respondent denies the allegation contained in Paragraph 16 of the Petition for

Cancellation.

17. Respondent denies the allegation contained in Paragraph 17 of the Petition for Cancellation.

18. The allegations contained in Paragraph 18 set forth conclusions of fact and/or law for which no responsive pleading is required. To the extent that a responsive pleading is required, Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18, and therefore DENIES the same.

19. Respondent denies the allegations contained in Paragraph 19 of the Petition for Cancellation.

With regard to Claim II

20. Respondent incorporates paragraphs 1 through 19 inclusive of this Answer as if such paragraphs were fully set forth herein at length.

21. Respondent denies the allegation contained in Paragraph 21 of the Petition for Cancellation.

22. Respondent denies the allegations contained in Paragraph 22 of the Petition for Cancellation.

23. Respondent denies the allegation contained in Paragraph 23 of the Petition for Cancellation.

24. Respondent denies the allegation contained in Paragraph 24 of the Petition for Cancellation.

With regard to Claim III

25. Respondent incorporates paragraphs 1 through 24 inclusive of this Answer as if such paragraphs were fully set forth herein at length.

26. Respondent denies the allegation contained in Paragraph 26 of the Petition for Cancellation.

27. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegations contained in Paragraph 27 of the Petition for Cancellation, and, therefore, denies same.

28. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegations contained in Paragraph 28 of the Petition for Cancellation, and, therefore, denies same.

29. Respondent lacks knowledge and information sufficient to form a belief with respect to the allegations contained in Paragraph 29 of the Petition for Cancellation, and, therefore, denies same.

30. Respondent denies the allegation contained in Paragraph 30 of the Petition for Cancellation.

31. The allegations contained in Paragraph 31 set forth conclusions of fact and/or law for which no responsive pleading is required. To the extent that a responsive pleading is required, Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 31, and therefore DENIES the same.

32. Respondent denies the allegations contained in Paragraph 32 of the Petition for Cancellation.

With regard to Claim IV

33. Respondent incorporates paragraphs 1 through 32 inclusive of this Answer as if such paragraphs were fully set forth herein at length.

34. Respondent denies the allegations contained in Paragraph 34 of the Petition for Cancellation.

35. Respondent denies the allegations contained in Paragraph 35 of the Petition for Cancellation.

36. Respondent denies the allegations contained in Paragraph 36 of the Petition for Cancellation.

37. Respondent denies the allegations contained in Paragraph 37 of the Petition for Cancellation.

FIRST AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the equitable doctrine of estoppel.

SECOND AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the equitable doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the equitable doctrine of unclean hands.

WHEREFORE, Respondent requests that the Petition for Cancellation be dismissed in its entirety and such other and further relief as may be just and proper.

Respectfully submitted,

THOMAS M. WILENTZ,
ATTORNEY AT LAW, PLLC
Attorney for Respondent

Dated: Scarsdale, New York
June 4, 2012

By _____
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White Plains, NY 10601
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served counsel for all parties to this action with a copy of the foregoing ANSWER TO PETITION FOR CANCELLATION by depositing the same by first-class mail in an envelope addressed to:

EDWIN D. SCHINDLER
EDWIN D. SCHINDLER, PATENT ATTORNEY
4 HIGH OAKS COURT P. O. BOX 4259
HUNTINGTON, NY 11743-0777

Scarsdale, New York
June 4, 2012

_____
Thomas M. Wilentz