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

Proceeding	92055646
Party	Defendant Christian Fyke
Correspondence Address	LEE KIM TUCKER ARENSBERG, PC 1500 ONE PPG PLACE PITTSBURGH, PA 15222 UNITED STATES LKIM@TUCKERLAW.COM
Submission	Answer
Filer's Name	LEE KIM
Filer's e-mail	LKIM@TUCKERLAW.COM
Signature	/LEE KIM, REG. #53125/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**THE RIVERTOWN BREWING  
COMPANY, LLC,**

**Petitioner,**

**v.**

**CHRISTIAN FYKE,**

**Respondent**

**Cancellation No. 92055646  
Directed to Reg. Nos. 3,502,445  
and 3,942,905**

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**ANSWER TO PETITION FOR CANCELLATION**

Opposer, The Rivertown Brewing Company, LLC's ("Petitioner") Petition for Cancellation of Respondent's United States Servicemark Registration No. 3,502,445 and Trademark Registration No. 3,942,905 should be denied for reasons which include the following: (i) Respondent's registered marks were not procured either by fraud upon the United States Patent and Trademark Office or by willful, intentional and repeated submissions of false statements of fact, omissions, and material misrepresentations, (ii) Respondent's applications for the registered marks were not filed in the name of the wrong owner, nor were the resulting registrations for the registered marks procured in the name of the wrong owner, (iii) Respondent's registered marks have not been abandoned by the Respondent, and (iv) Petitioner does not have priority of use of its marks over Respondent's registered marks.

The Respondent, Christian Fyke, ("Respondent") by and through its counsel hereby responds to the Petitioner's Petition for Cancellation ("Petition") as follows:

1. Respondent, Christian Fyke, admits that he is an individual located in the State of Pennsylvania, having an address at 160 Wallace Drive, Monroeville, Pennsylvania

15146. Respondent denies that 500 Jones Street, Verona, PA 15147 is or was his personal address or residential address.

2. Admitted.

3. Denied.

4. Admitted.

5. Admitted.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth or allegations contained in paragraph 6 of the Petition. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny. Respondent demands strict proof of the allegations.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth or allegations contained in paragraph 7 of the Petition. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny. Respondent demands strict proof of the allegations.

8. Admitted.

9. Respondent denies the allegations contained in Paragraph 9 of the Petition and, therefore, demands strict proof.

10. Respondent denies the allegations contained in Paragraph 10 of the Petition and, therefore, demands strict proof.

11. Respondent denies the allegations contained in Paragraph 11 of the Petition and, therefore, demands strict proof.

12. Respondent denies the allegations contained in Paragraph 12 of the Petition and, therefore, demands strict proof.

13. Respondent admits sending the cease and desist letter to Petitioner and demanding that Petitioner cease and desist from further use of Petitioner's marks. Respondent denies

the remainder of the allegations contained in Paragraph 13 of the Petition and, therefore, demands strict proof.

14. Respondent denies the allegation that Respondent filed Section 7 Amendments on Respondent's Registrations in direct response to Petitioner's letter. Respondent denies the remainder of the allegations contained in Paragraph 14 and, therefore, demands strict proof.

15. Respondent denies the allegations contained in Paragraph 15 of the Petition and, therefore, demands strict proof.

16. Respondent denies the allegations contained in Paragraph 16 of the Petition and, therefore, demands strict proof.

17. Respondent denies the allegations contained in Paragraph 17 of the Petition and, therefore, demands strict proof.

18. Respondent denies the allegations contained in Paragraph 18 of the Petition and, therefore, demands strict proof.

19. Respondent denies the allegations contained in Paragraph 19 of the Petition and, therefore, demands strict proof.

20. Respondent denies the allegations contained in Paragraph 20 of the Petition and, therefore, demands strict proof.

21. Respondent denies the allegations contained in Paragraph 21 of the Petition and, therefore, demands strict proof.

22. Respondent denies the allegations contained in Paragraph 22 of the Petition and, therefore, demands strict proof.

23. Respondent denies the allegations contained in Paragraph 23 of the Petition and, therefore, demands strict proof.

24. Respondent denies the allegations contained in Paragraph 24 of the Petition and, therefore, demands strict proof.

25. Respondent denies the allegations contained in Paragraph 25 of the Petition and, therefore, demands strict proof.
26. Respondent is without knowledge or information sufficient to form a belief as to the truth or allegations contained in paragraph 26 of the Petition. Since Respondent can neither admit nor deny the paragraph as written, Respondent must deny. Respondent demands strict proof of the allegations.

FURTHERMORE, Respondent sets forth the following in support of his position:

27. Respondent's marks are unique and distinctive.
28. Respondent's marks are not geographically descriptive.
29. The predominant portions of Petitioner's marks "THE RIVERTOWN BREWING COMPANY" (word mark) and "RIVERTOWN BREWING COMPANY RTB" (design mark) consist of the term "RIVERTOWN."
30. The design elements of Petitioner's mark (which contain the literal elements "RIVERTOWN BREWING COMPANY RTB") do not prevent a likelihood of confusion because the word portion of this mark (which consists of the term "RIVERTOWN") is the predominant portion of the mark.
31. The literal element of Respondent's word and design marks consist of the term "RIVERTOWNE."
32. The predominant portions of Petitioner's marks (i.e., the term "RIVERTOWN") are highly similar to Respondent's "RIVERTOWNE" marks in terms of appearance, sound, and, as a result, create the same commercial impression and Petitioner's marks are likely to be confused with Respondent's marks.
33. Petitioner's use of the term "RIVERTOWN" which does not contain an "E" at the end does not serve to distinguish the Petitioner's marks from the Respondent's "RIVERTOWNE" marks.

34. Petitioner's use of "THE" in its marks does not serve to distinguish Petitioner's marks from Respondent's marks.
35. Petitioner's design mark application for "RIVERTOWN BREWING COMPANY RTB" is for goods which include beer, ale, lager, and pale ale. Respondent's design mark registration for "RIVERTOWNE" is for goods which include beer, ale, india pale ale, lager, stout, porter and pilsner; and non-alcoholic beverages, namely, carbonated beverages.
36. Petitioner's word mark application for "THE RIVERTOWN BREWING COMPANY" is for services which include brewery services. Respondent's word mark registration for "RIVERTOWNE" is for services which include bar and restaurant services.
37. In Petitioner's request for reconsideration, Petitioner requested a disclaimer for the words "BREWING COMPANY" apart from the mark as shown for its application for "THE RIVERTOWN BREWING COMPANY."
38. The wording "BREWING COMPANY" in Petitioner's mark "THE RIVERTOWN BREWING COMPANY" is, at best, descriptive when applied to brewery services (which are the listed services for this applied-for mark).
39. The wording "BREWING COMPANY" in Petitioner's mark "RIVERTOWN BREWING COMPANY RTB" is, at best, descriptive when applied to beer, ale, lager, pale ale, microbrews (which are the listed products for this applied-for mark).
40. Respondent's marks have priority over Petitioner's marks and thus are senior marks.
41. Respondent's senior marks have considerable consumer goodwill and Petitioner is riding off of the goodwill of Respondent's senior marks by having adopted confusingly similar marks which are junior marks.
42. Respondent submitted a Section 7 request on April 2, 2012 to correct the first dates of use anywhere and in commerce to reflect at least as early as 20020712 and to correct the listed services to reflect bar and restaurant services for the "RIVERTOWNE" word

mark. This Section 7 request was submitted by Respondent soon after Respondent noticed the incorrect dates of use listed and that the incorrect services were listed.

Respondent submitted a verified statement on June 27, 2012.

43. Respondent submitted a Section 7 request on April 2, 2012 to correct the first dates of use to be at least as early as 20070610 for the "RIVERTOWNE" design mark. This Section 7 request was submitted by Respondent soon after Respondent noticed the incorrect dates of use listed. Respondent submitted a verified statement on May 21, 2012.

44. Respondent has had multiple instances of actual consumer confusion reported to him by consumers in that Petitioner's marks have been mistakenly associated with Respondent's marks.

**CONCLUSION**

Respondent respectfully requests that the Petition be denied in light of the foregoing. The Board is invited to contact Respondent's undersigned counsel by e-mail or by telephone at (412) 566-1212 should there be any unresolved matters remaining.

Date: June 29, 2012

Respectfully Submitted,

Tucker Arensberg, P.C.

By:   
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Lee Kim, Esq. - USPTO Reg. No. 53,125  
Ralph F. Manning, Esq. - USPTO Reg.  
No. 26,943  
Attorneys for Respondent

Tucker Arensberg, P.C.  
1500 PPG Place  
Pittsburgh, PA 15222  
Telephone: (412)594-3915  
Facsimile: (412)594-5619  
E-mail: lkim@tuckerlaw.com or rmanning@tuckerlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer to Petition for Cancellation was served upon Attorneys for Petitioner this 29<sup>th</sup> day of June, 2012 by first class mail, postage pre-paid, addressed to:

Karen Kreider Gaunt and April Besl  
Dinsmore & Shohl LLP  
225 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

By: Lee Kim  
Lee Kim, Esq.  
USPTO Reg. No. 53,125  
Attorney for Respondent

Tucker Arensberg, P.C.  
1500 PPG Place  
Pittsburgh, PA 15222  
Telephone: (412)594-3915  
Facsimile: (412)594-5619  
E-mail: lkim@tuckerlaw.com