

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

85249731

YOUR PHOTO ON CANVAS, LLC,

Petitioner,

vs.

MALOVANI DESIGN CORP.,

Registrant.

) Cancellation No.: 92055679

) Registration No.: 4151869

) Mark: Your Photo On Canvas

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TRADEMARK OFFICE

ANSWER TO PETITION TO CANCEL

Registrant, Malovani Design Corp. ("Registrant"), by its attorneys, hereby submits its Answer to the Petition to Cancel ("Petition") filed by Petitioner, Your Photo On Canvas LLC ("Petitioner"), on May 30, 2012 as follows:

1. Registrant denies the allegations of paragraph 1 of the Petition.
2. Registrant admits the allegations of paragraph 2 of the Petition.
3. Registrant admits that the Mark was registered on the Supplemental Registration on May 29, 2012. Except as expressly admitted herein, Registrant denies the remaining allegations of paragraph 3 of the Petition.
4. Registrant denies the allegations of paragraph 4 of the Petition.
5. Registrant admits that the Assignment Agreement was entered to vest authority in Adam Malovani ("Malovani"): (a) to take steps necessary to register and maintain the YPOC Brand with the United States Patents and Trademark Office; (b) to license the YPOC Brand to third parties; and (c) to enforce common law, statutory and contractual rights arising from the YPOC Brand and the licensing of the same. Except



07-13-2012

as expressly admitted herein, Registrant denies the remaining allegations of paragraph 5 of the Petition.

6. Registrant states that Malovani is a founder of, holds at least a 40% membership interest in and was President of Petitioner until third party John S. Doe ("Doe") unlawfully and wrongly terminated Malovani as President of Petitioner in January 2011. Registrant further states that, beginning in or about January 2009, Malovani authorized: (a) Petitioner to utilize the Mark at issue herein in connection with a joint venture formed between Doe and Malovani in December 2008; (b) an attorney retained by Doe to assist in completing the registration of the Mark on behalf of Registrant; (c) the attorney retained by Doe failed to do so; (d) in or about May 2011, Petitioner was advised that the authorization for the use of the Mark terminated when Doe unlawfully and wrongly terminated Malovani as President of Petitioner; and (e) despite being placed on notice of the termination of the authorization, Petitioner, Doe and entities affiliated with Doe continue to use the Mark. Except as expressly admitted herein, Registrant denies the remaining allegations of paragraph 6 of the Petition.
7. Registrant denies the allegations of paragraph 7 of the Petition.
8. Registrant denies the allegations of paragraph 8 of the Petition.
9. Registrant denies the allegations of paragraph 9 of the Petition.
10. Registrant denies the allegations of paragraph 10 of the Petition.
11. Registrant denies the allegations of paragraph 11 of the Petition.
12. Registrant denies the allegations of paragraph 12 of the Petition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Registrant is, always has been and continues to be the owner of the Mark but has assigned to Adam Malovni, sole owner of Registrant, the right and authority: (a) to take steps necessary to register and maintain the YPOC Brand with the United States Patents and Trademark Office; (b) to license the YPOC Brand to third parties; and (c) to enforce common law, statutory and contractual rights arising from the YPOC Brand and the licensing of the same.

Second Affirmative Defense

Petitioner is estopped from bringing and/or maintaining this Petition by virtue of, among other things: (a) the conduct set forth in paragraph 6 above of this Answer (which is incorporated herein by this reference); and (b) rulings of the Honorable Andrew Guilford in the action pending before the United States District Court, Central District of California, short-titled *Adam Malovani etc. v. John S. Doe etc.*, Case No. CV11-00787 AGMLGx..

Third Affirmative Defense

Petitioner has waived any right it may have had to bring and/or maintain this Petition by virtue of, among other things, the conduct set forth in paragraph 6 above of this Answer (which is incorporated herein by this reference).

Fourth Affirmative Defense

Petitioner has no standing to bring and/or maintain this Petition by virtue of, among other things: (a) the conduct set forth in paragraph 6 above of this Answer (which is incorporated herein by this reference); and (b) the conduct set forth in the action pending before the United States District Court, Central District of California, short-titled *Adam Malovani etc. v. John S. Doe etc.*, Case No. CV11-00787 AGMLGx.

Fifth Affirmative Defense

Pursuant to the Doctrine of Unclean Hands, Petitioner is barred from bringing and/or maintaining this Petition by virtue of, among other things: (a) the conduct set forth in paragraph 6 above of this Answer (which is incorporated herein by this reference); and (b) the conduct asserted

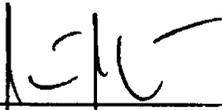
in the Complaint filed against Petitioner and others in the action pending before the United States District Court, Central District of California, short-titled *Adam Malovani etc. v. John S. Doe etc.*, Case No. CV11-00787 AGMLGx.

WHEREFOR, Registrant respectfully requests that the Petition to Cancel be rejected and that Registrant's mark be allowed to remain registered.

Dated: July 10, 2012

SILVERMAN SCLAR SHIN & BYRNE LLP

By: _____


Robert M. Gilchrest, Esq.
Patrick M. Maloney, Esq.
Attorneys for Applicant
MALOVANI DESIGN CORP.

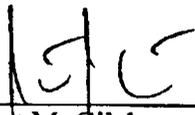
CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Answer to Petition to Cancel with Affirmative Defenses was served upon Petitioner by depositing a copy of the same in the United States mail, first class postage prepaid, on the 12th day of July, 2012, addressed to:

Roger N. Behle, Jr., Esq.
Foley Bezek Behle & Curtis, LLP
575 Anton Blvd., Suite 710
Costa Mesa, CA 92626
United States

Dated: July 12, 2012

SILVERMAN SCLAR SHIN & BYRNE LLP

By: 

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MALOVANI DESIGN CORP.