

ESTTA Tracking number: **ESTTA495326**

Filing date: **09/19/2012**

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

Proceeding	92056033
Party	Defendant Eaves Realty Group LLC
Correspondence Address	EAVES REALTY GROUP LLC 116 NORTH 16TH STREET PADUCAH, KY 42001-2710 UNITED STATES mike@eavesrealtygroup.com
Submission	Answer
Filer's Name	Lindell Choat
Filer's e-mail	lindellc@lindellchoat.com
Signature	/S/
Date	09/19/2012
Attachments	Eaves Realty Group LLC - Response to Petition for Cancellation.PDF (4 pages) (122995 bytes)

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

AvalonBay Communities, Inc.,

Petitioner,

vs.

Eaves Realty Group LLC,

Registrant.

Cancellation No.: 92056033

Registration No.: 3995281

Registration Date: July 12, 2011

Trademark:

EAVESREALTYGROUP.COM

International Class: 36

REGISTRANT'S RESPONSE TO PETITION FOR CANCELLATION

Trademark Trial and Appeal Board
U. S. Patent and Trademark Office
Post Office Box 1451
Alexandria, Virginia 22313-1451

Dear Sir or Madam:

Registrant, Eaves Realty Group LLC, submits the following as its response to the Petition for Cancellation herein.

1. As to numerical paragraph 1 of the Petition for Cancellation, Registrant is without sufficient information to either admit or deny the allegations herein, therefore, same are denied.
2. As to numerical paragraph 2 of the Petition for Cancellation, Registrant admits the factual allegations herein. Registrant would further observe that it has used this mark prior to the application process, during the application process, and subsequent to the application process in its use of myriad products employed in the stream of commerce, including but not limited to yard signs, website, business cards, etc., it being the intent of

the Registrant that, when you think or see EAVESREALTYGROUP.COM, you immediately recognize the availability of real estate, real estate management, and all manner of real estate service.

3. As to numerical paragraph 3 of the Petition for Cancellation, Registrant denies the allegations herein.

4. As to numerical paragraph 4 of the Petition for Cancellation, Registrant denies the allegations herein. Registrant would further observe that its mark just happens to also provide a URL for its website if one should choose to use the mark in such a fashion.

5. As to numerical paragraph 5 of the Petition for Cancellation, Registrant denies the allegations herein inasmuch as the mark is clearly associated with Registrant's services and lends itself to understanding of Registrant's services.

6. As to numerical paragraph 6 of the Petition for Cancellation, Registrant denies the allegations herein.

7. As to numerical paragraph 7 of the Petition for Cancellation, Registrant denies the allegations herein. Registrant would further observe that use was prior to application as indicated in numerical paragraph 2 above and reflected in Exhibit "A" attached to the Petition for Cancellation.

8. As to numerical paragraph 8 of the Petition for Cancellation, Registrant denies the allegations herein. Registrant would further observe that Registrant is being harmed by Petitioner's effort to cancel its mark to its own financial gain.

AFFIRMATIVE DEFENSES

Without waiver of his Answer, Registrant asserts the following affirmative defenses to the Petition for Cancellation.

First Affirmative Defense

The Petition fails to state a claim upon which relief may be granted.

Second Affirmative Defense

Registrant has filing priority over Petitioner.

Third Affirmative Defense

Petitioner either had knowledge of Registrant's use of the Mark as early as Registrant's filing date of October 15, 2010, or conceivably, and at least by March 22, 2011, when notice was published for opposition. Upon knowledge, information or belief, Petitioner had notice and opportunity to file an Opposition prior to the registration of the Mark and did not. Therefore, Petitioner is barred by the doctrines of laches or acquiescence from the relief requested or at all.

Fourth Affirmative Defense

Respondent/Registrant alleges that Petitioner comes before this Board with unclean hands sufficient to warrant denial of all relief requested by Petitioner as it is infringing upon Registrant's use of its mark.

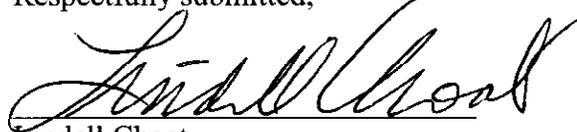
Fifth Affirmative Defense

Respondent/Registrant alleges that Petitioner has committed acts of unfair competition sufficient to warrant denial of all relief requested by Petitioner.

WHEREFORE, Respondent/Registrant requests that this Cancellation Action 92056033 be dismissed with prejudice.

Dated September 19, 2012

Respectfully submitted,



Lindell Choat

lindelle@lindellchoat.com

Post Office Box 890

211 West Main Street

Eddyville, Kentucky 42038-0890

(270) 388-7717

Attorney for Respondent/Registrant Eaves

Realty Group LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2012, a true and correct copy of the foregoing was filed by ESTTA to the Trademark Trial and Appeal Board, and served by United States mail, postage prepaid, on all counsel identified in the service list below.



Lindell Choat

Hon. Brent D. Sokol
JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, California 90071

Hon. Anna E. Raimer
JONES DAY
717 Texas Avenue, Suite 3300
Houston, Texas 77002

Attorneys for Petitioner