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

Proceeding	92057221
Party	Defendant Active Life Events, Inc.
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Submission	Answer
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Date	06/26/2013
Attachments	SMR- ANSWER TO PET FOR CANCELLATION D1.pdf(48521 bytes)

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

SURVIVOR PRODUCTIONS, LLC)	Cancellation No.: 92057221
)	
Petitioner,)	Registration Cert. No.: 4124895
)	
vs.)	Mark: SURVIVOR MUD RUN
)	
ACTIVE LIFE EVENTS, INC.)	Issued: April 10, 2012
)	
Respondent.)	
_____)	

REGISTRANT’S ANSWER TO PETITION FOR CANCELLATION

Registrant, Active Life Events, Inc., a California corporation with a mailing address of 33562 Yucaipa Blvd. # 4 – PMB # 141, Yucaipa, CA 92399, (hereinafter “Registrant”), hereby answers the Petition For Cancellation (“Cancellation”) filed by Survivor Productions, Inc. (hereafter “Petitioner”) against registration of Registrant’s U.S. service mark “SURVIVOR MUD RUN” as set forth below.

Registrant hereby generally and specifically denies each and every allegation contained in the Petition For Cancellation hereinafter not specifically admitted, modified, or qualified, and strict proof is demanded thereof. Registrant further responds as follows:

Registrant admits that it is the owner of the service mark “SURVIVOR MUD RUN,” U.S. Registration No. 4124895 issued on April 10, 2012 in connection with the following services in International Class 041: “Athletic and sports event services, namely, arranging, organizing, operating and conducting marathon races; Encouraging amateur sports and physical education by organizing, sanctioning, conducting, regulating and governing amateur athletic programs and activities; Entertainment in the nature of competitions in the field of running;

Entertainment services, namely, arranging and conducting of competitions for running races; Organizing, arranging, and conducting running races and related social entertainment events.”

Registrant denies any and all other prefatory remarks and allegations in the introductory paragraph of the Petition For Cancellation.

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Petition For Cancellation and therefore, on that basis, denies same.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Petition For Cancellation and therefore, on that basis, denies same.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Petition For Cancellation and therefore, on that basis, denies same.

4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Petition For Cancellation and therefore, on that basis, denies same.

5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Petition For Cancellation and therefore, on that basis, denies same.

6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Petition For Cancellation and therefore, on that basis, denies same. Registrant is further informed and believes that Petitioner has not distributed or licensed goods in each of the categories as alleged in Paragraph 6 of the Petition.

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Petition For Cancellation and therefore, on that basis, denies same.

8. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Petition For Cancellation and therefore, on that basis, denies same.

9. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Petition For Cancellation and therefore, on that basis, denies same.

10. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Petition For Cancellation and therefore, on that basis, denies same. Registrant further denies that the Petitioner is the owner of any federal registrations for the “SURVIVOR” mark alone, without additional words, logos and designs.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Petition For Cancellation and therefore, on that basis, denies same.

12. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Petition For Cancellation and therefore, on that basis, denies same. Registrant further denies that the Petitioner has established extensive common law rights in the mark “SURVIVOR” both in plain text and as a single word, or in conjunction with other designs and stylizations, in connection with various and numerous goods and services.

13. Registrant is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 13 of the Petition For Cancellation and therefore, on that basis, denies same. Registrant further denies that an excerpt from the “survivor televisions show’s website illustrating how the “SURVIVOR” mark is used online both in plain text and with various designs was attached to the Petition, and further denies that many other forms of use, both visual and audible are frequently made by Petitioner and its alleged, yet unidentified licensees.

14. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Petition For Cancellation and therefore, on that basis, denies same.

15. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Petition For Cancellation and therefore, on that basis, denies same.

16. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Petition For Cancellation and therefore, on that basis, denies same.

17. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Petition For Cancellation and therefore, on that basis, denies same.

18. Registrant denies the allegations contained in paragraph 18 of the Petition.

19. Registrant admits the allegations contained in Paragraph 19 of the Petition.

20. Registrant admits only that Mr. Sartin was previously employed by a CBS affiliate radio station in Colton, California, KFRG-FM. Registrant lacks sufficient information and belief and otherwise denies that the dates of Mr. Sartin’s prior employment and job title(s) were accurately set forth in the Petition.

21. Registrant admits only that at the time Mr. Sartin was employed by KFRG, that he advised several of his coworkers that he was planning to launch a mud run competition under the name “Gladiator Mud Run” and that Mr. Sartin did in fact subsequently organize and conduct one or more mud run competitions under name “Gladiator Mud Run.” Registrant denies the remaining allegations.

22. Registrant admits only that prior to 2011, and for some time while Mr. Sartin was employed by KFRG, (and continuing thereafter) that he advised several of his coworkers including station executives that he was planning to launch a mud run competition under the name “Survivor Mud Run.” Beginning in 2011, on behalf of Registrant, Mr. Sartin has organized and conducted a series of mud run competitions under name “Survivor Mud Run.” Registrant denies the remaining allegations.

23. Registrant admits only that while Mr. Sartin was employed by KFRG that he was directly involved in organizing a mud run under the name “MACH 1 Mud Run.”

24. Registrant denies the allegations contained in paragraph 24 of the Petition.

25. Registrant admits the allegations contained in the first two sentences of paragraph 25 of the Petition. Registrant denies that the material attached as Exhibit 3 to the Petition and further described as an “excerpt from” the website active at <www.survivormudrun.com> is fairly or accurately depicted or described.

26. Registrant admits the allegations contained in the first two sentences of paragraph 26 of the Petition. Registrant denies that the material attached as Exhibit 4 to the Petition is fairly or accurately depicted or described.

27. Registrant admits only that it has displayed its Registered Trademark “SURVIVOR MUD RUN” as words alone, and at certain times, in various fonts and formats and in connection with certain designs including the designs shown at paragraph 27 (a) and (b).

28. Registrant denies the allegations contained in paragraph 28 of the Petition.

29. Registrant admits only that at its “Survivor Mud Run” race conducted in the Seattle, Washington area, that it used and displayed certain advertising and signage that likely included one of the designs respectively shown at paragraph 27(a) and (b) of the Petition and that it distributed a limited number of T-shirts that displayed the design shown at paragraph 27(a) of the Petition. Registrant denies the remaining allegations contained in paragraph 29 thereof.

30. Registrant admits only that at least since January 01, 2011, it has conducted numerous mud run races and related events using its Registered “Survivor Mud Run” trademark as words, alone and with a variety of designs. Registrant denies the remaining allegations contained in paragraph 30 of the Petition.

31. Registrant denies the allegations contained in paragraph 31 of the Petition.

32. Registrant admits only that on July 13, 2011, it caused to be filed an application for registration on the Principal Register *for* the mark “SURVIVOR MUD RUN.” Registrant is informed and believes that such application contained a disclaimer of the phrase “MUD RUN” apart from the mark as shown.

33. Registrant admits the allegations contained in paragraph 33 of the Petition.

34. Registrant admits the allegations contained in paragraph 34 of the Petition.

35. Registrant admits that the records of the underlying registration reflect that an Examiner’s Amendment was issued as stated in paragraph 35 of the Petition.

36. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Petition For Cancellation and therefore, on that basis, denies same.

37. Registrant denies the allegations contained in paragraph 37 of the Petition.

38. Registrant denies the allegations contained in paragraph 38 of the Petition.

39. Registrant denies the allegations contained in paragraph 39 of the Petition.
40. Registrant denies the allegations contained in paragraph 40 of the Petition.
41. Registrant admits that the underlying registration was ultimately issued on April 10, 2012.
42. Registrant denies the allegations contained in paragraph 42 of the Petition.
43. Registrant denies the allegations contained in paragraph 43 of the Petition.
44. Registrant denies the allegations contained in paragraph 44 of the Petition.
45. Registrant denies the allegations contained in paragraph 45 of the Petition.
46. Registrant denies the allegations contained in paragraph 46 of the Petition.
47. Registrant denies the allegations contained in paragraph 47 of the Petition.
48. Registrant denies the allegations contained in paragraph 48 of the Petition.
49. Registrant denies the allegations contained in paragraph 49 of the Petition.
50. Registrant denies the allegations contained in paragraph 50 of the Petition.
51. Registrant denies the allegations contained in paragraph 51 of the Petition and all subparagraphs inclusive therein.

Registrant denies the prayer for relief and further denies the validity, admissibility and propriety of the items identified as “Exhibits” as referenced or attached to the Petition, and objects to the consideration of such exhibits for all purposes, until the proper foundational and evidentiary requirements are met and otherwise in accord with *37 C.F.R. § 2.122(c)*.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief can be granted, and in particular, fails to state any legally sufficient grounds for seeking cancellation of the underlying registration.
2. Registrant’s SURVIVOR MUD RUN mark when viewed as a whole and used in

connection with Registrant's services, is not likely to cause confusion, or to cause mistake, or to deceive as to any affiliation, connection, or association with any of Petitioner's purported marks, when viewed as a whole, and considered in light of the marketplace realities of Petitioner's alleged use of its own goods and services asserted.

3. To the extent that the Registrant's SURVIVOR MUD RUN mark similarly contains only the common descriptive term "SURVIVOR" in its apt and descriptive sense, namely as "a person or thing that survives," or "a person who continues to function or prosper in spite of opposition, hardship, or setbacks," when considering the services of the Registrant, the relevant consuming public is not likely to be confused by with any of the Petitioner's asserted marks, nor with any of its goods and services that Petitioner has asserted to have used.

4. Petitioner does not own any trademark rights in the word element "SURVIVOR" alone. To the contrary, each of Petitioner's purported "SURVIVOR" marks asserted respectively include an oval background containing a stylized drawing of landmarks and designs relevant to the season's location, and the words, "Outplay, Outlast, Outwit," and each typically also includes additional words, such as "All-Stars" "GUATEMALA THE MAYA EMPIRE" "THAILAND" "PANAMA EXILE ISLAND" and the like.

As was particularly found by the District Court in the Northern District of Illinois (1:00-cv-05060 Dkt. 109 at 8) [Petitioners'] "*Series logos consist of more than just the word 'SURVIVOR.' Indeed, the first season logo features the words 'OUTWIT,' 'OUTPLAY' and 'OUTLAST' within an oval, against a background island scene with palm trees on top and water below. The second season logo further distinguishes the mark by attaching it to the phrase 'AUSTRALIAN OUTBACK' and superimposing an Australian outback scene with kangaroo and sunset.*"

As was further stated within the decision published by the United States Court of Appeals, Seventh Circuit, 385 F.3d 772 (7th Cir. 2004), *“The word “Survivor” never appears alone on any of CBS’s merchandise at issue. The term always appears over a relevant scene of some kind and surrounded by the words, “Outplay, Outlast, Outwit.” Consumers in the marketplace never see CBS’s mark as the word “Survivor” alone.”* Accordingly, because Petitioner has no exclusive rights in the term “SURVIVOR” alone, the Petition must fail.

5. Petitioner’s claims are barred by the doctrine of laches and/or the doctrine of acquiescence. According to the Petition, “beginning sometime in 2011” Petitioner became aware that Kevin Sartin and Registrant were using the mark SURVIVOR MUD RUN in connection with a mud run competition. Further the application for the subject registration was filed on July 13, 2011, was published for opposition on January 24, 2012 and after no one opposed the application, the subject registration for the mark SURVIVOR MUD RUN was registered on April 10, 2012.

Since at least as early as January 2, 2011, Registrant has openly and notoriously used the subject mark SURVIVOR MUD RUN in connection with a series of races and running competitions in a number of cities throughout the country. Registrant’s SURVIVOR MUD RUN mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Registrant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Registrant, and caused the Mark to become a valuable asset of Registrant. Registrant’s use of the Mark has been known to Petitioner and despite such knowledge; Petitioner has failed to take meaningful action to assert the claims on which it now bases its Petition For Cancellation, on which inaction Registrant has relied to its detriment.

6. Petitioner’s claims are barred by the doctrine of judicial estoppel, res judicata

and/or claim preclusion. Petitioner has previously alleged and relied upon certain facts in the matter known as *SULLIVAN III v. CBS CORPORATION, et al.*, as are mentioned in the Fourth Affirmative Defense alleged hereinabove and as are reflected in the decisions of the District Court in the Northern District of Illinois (1:00-cv-05060 Dkt. 109 at 8) and the United States Court of Appeals, Seventh Circuit, 385 F.3d 772 (7th Cir. 2004). Plaintiff must therefore be equitably estopped from any attempt to disprove any such material facts that it has alleged and relied upon previously therein.

7. Due to its unfair and inappropriate actions, inaction and conduct prior to the time of its filing of the Petition For Cancellation recently filed herein, as well as Petitioner's false and misleading allegations and false and inadmissible materials attached to Petition, Petitioner's claims are barred by the doctrine of unclean hands.

In view of the foregoing, Registrant maintains that the Petition is groundless and baseless in fact; that Petitioner has not shown wherein it will be, or is likely to be, damaged by the continued Registration. Therefore, Registrant prays that the Petition be dismissed

ANDERSON & ASSOCIATES

Dated: June 26, 2013

by: /StephenLAnderson/
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Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing Answer to Petition For Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the attorney for Petitioner as follows:

Christopher P. Beall
LEVINE SULLIVAN KOCH & SCHULZ
321 West 44th Street
Suite 1000
New York, NY 10036

Dated: June 26, 2013

/StephenLAnderson/
Stephen L. Anderson