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

Proceeding	92057513
Party	Defendant Soundset, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3653506
Mark: SOUNDSET

Tresona Multimedia, LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057513
)	
Soundset, LLC,)	
)	
Registrant.)	

ANSWER TO PETITION TO CANCEL

Soundset, LLC (“Soundset” or “Registrant”), for its Answer to the Petition to Cancel of Tresona Multimedia, LLC (“Petitioner”), states as follows (but Registrant has omitted the argumentative subtitles Petitioner included in its Petition to Cancel):

1. Soundset is the listed owner of United States Trademark Registration 3,653,506 for “SOUNDSET,” filed on June 19, 2008 and registered on July 14, 2009, for the following goods and services:

“Printed materials, namely, posters” in IC 016, claiming a date of first use and first use in commerce of May 25, 2008.

“Clothing, namely, t-shirts” in IC 025, claiming a date of first use and first use in commerce of May 25, 2008.

“Entertainment services, namely, arranging and conducting musical concerts” in IC 041, claiming a date of first use and first use in commerce of May 25, 2008.

ANSWER: Registrant admits the allegations contained in Paragraph 1 of the Petition to Cancel.

2. Soundset arranges and operates an annual music festival held approximately each May in Minnesota.

ANSWER: Registrant admits the allegations contained in Paragraph 2 of the Petition to Cancel.

3. Soundset's music festival features Hip-Hop music performers.

ANSWER: Registrant admits the allegations contained in Paragraph 3 of the Petition to Cancel.

4. To market its music festival, Soundset prints and distributes posters.

ANSWER: Registrant admits the allegations contained in Paragraph 4 of the Petition to Cancel.

5. At its music festival, Soundset sells festival t-shirts displaying its logo and name.

ANSWER: Registrant admits the allegations contained in Paragraph 5 of the Petition to Cancel.

6. Under a separate trademark from its music festival, Soundset sells Hip- Hop CDs and music under the trademark Fifth Element.

ANSWER: Registrant denies the allegations contained in Paragraph 6 of the Petition to Cancel.

7. Soundset does not sell CDs, audio or video recordings, music or artistic recordings, or any digital music downloads using the Soundset trademark.

ANSWER: Registrant admits the allegations contained in Paragraph 7 of the Petition to Cancel.

8. At least as early as September 1, 1995 and through December 11, 2011, Soundset Recordings, LLC, an Arizona limited liability company ("Soundset Recordings") used the trademark SOUNDSET for creating and selling music recordings of artists, signing musical artists to its record label, and distributing recordings of the music.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Petition to Cancel and therefore denies the same.

9. Soundset has established extensive rights in this trademark throughout the United States and the World and its goodwill and reputation is very valuable in this trademark.

ANSWER: Registrant admits the allegations contained in Paragraph 9 of the Petition to Cancel insofar as they pertain to Registrant's SOUNDSET trademark. Registrant is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 of the Petition to Cancel and therefore denies the same.

10. Soundset has recorded and has artists among its catalog of recordings originating from the United States and countries around the World including, without limitation, United States, Korea, Russia, Mexico, Brazil, Canada, Chile, Newfoundland and Argentina.

ANSWER: Registrant denies the allegations contained in Paragraph 10 of the Petition to Cancel insofar as it is intended to refer to Registrant's activities. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 of the Petition to Cancel and therefore denies the same.

11. Soundset Recordings specifically used and continues to use the "Soundset" trademark in Registrant's home state since prior to Registrant's application filing through Minnesota through Soundset Recordings' dealings with well known cellist Gregory Hamilton who released a CD through Soundset Recordings called "The Hollywood Cello," which was funded through a grant from Concordia College.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Petition to Cancel and therefore denies the same.

12. On August 16, 2011, Soundset Recordings, the original owner of US trademark application serial no. 85399521, filed a US trademark application for the trademark SOUNDSET for the goods:

"Audio and video recordings featuring music and artistic performances; Compact discs featuring music; Digital music downloadable from the Internet; Downloadable musical sound recordings; Musical sound recordings; Musical video recordings" in IC 009, claiming a date of first use and a first use in commerce of September 1, 1995.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Petition to Cancel and therefore denies the same.

13. On December 12, 2011, Tresona Multimedia, LLC, an Arizona limited liability company, purchased all of Soundset Recordings' rights and title in the trademark SOUNDSET and its pending trademark application.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Petition to Cancel and therefore denies the same.

14. On December 13, 2011, the Trademark Office issued a rejection of the application asserting a likelihood of confusion under 15 USC 1052(d) based upon Registrant's registration no. 3,653,506 for the trademark Soundset.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Petition to Cancel and therefore denies the same.

15. On June 13, 2012, a response was filed to the December 13, 2011 rejection of the trademark arguing that Soundset runs an annual music festival in Minnesota, and that even despite music being sold at the festival there would be no likelihood of consumer confusion.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Petition to Cancel and therefore denies the same.

16. On July 12, 2012, the Trademark Office issued a final rejection to trademark application serial no. 85399521, maintaining the rejection and rejecting the arguments that there would be no likelihood of consumer confusion.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Petition to Cancel and therefore denies the same.

17. Petitioner incorporates by reference all paragraphs above as though fully set forth herein.

ANSWER: Registrant repeats and realleges its responses to Paragraphs 1 - 16 of the Petition to Cancel as above, as though fully set forth herein.

18. Petitioner owns the goodwill and all trademark rights associated with the Soundset Trademark for use with at least audio and video recordings featuring music and artistic performances, CDs featuring music and downloadable music recordings.

ANSWER: Registrant is without knowledge or information sufficient to form a belief

as to the truth of the allegations in Paragraph 18 of the Petition to Cancel and therefore denies the same.

19. Petitioner's rights are superior to Registrant's by more than twelve years.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Petition to Cancel and therefore denies the same.

20. Petitioner's use of the Soundset trademark extends throughout the United States and many countries of the World including Registrant's home state where Registrant provides its music festival.

ANSWER: Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Petition to Cancel and therefore denies the same.

21. The continued registration of US Trademark Registration 3,653,506 to Registrant is causing irreparable injury to the business reputation and property of Petitioner and jeopardizes Petitioner's ability to protect its goodwill and other trademark rights in the Soundset trademark.

ANSWER: Registrant denies that the continued registration of US Trademark Registration 3,653,506 to Registrant is causing irreparable injury to the business reputation and property of Petitioner. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Petition to Cancel and therefore denies the same.

22. The Trademark Office's refusal to register Petitioner's trademark application based on the asserted likelihood of confusion with Registrant's continued US Trademark Registration 3,653,506 is irreparably harming Petitioner and will continue to harm Petitioner so long as the Registration exists and the Trademark Office refuses its registration.

ANSWER: Registrant denies the allegations contained in Paragraph 22 of the Petition to Cancel.

23. The continued registration of US Trademark Registration 3,653,506 will continue to cause a likelihood of consumer confusion with Petitioner's trademark Soundset if Registrant is permitted to continue using the trademark in the confusingly similar industry of "entertainment services, namely, arranging and conducting musical concerts."

ANSWER: Registrant denies the allegations contained in Paragraph 23 of the Petition to Cancel.

24. Petitioner's inability to fully protect its trademark rights with a federal trademark registration presently harms Petitioner and threatens to significantly harm Petitioner in the future from other third party infringers.

ANSWER: Registrant denies the allegations contained in Paragraph 24 of the Petition to Cancel.

Affirmative Defenses

Registrant hereby asserts the following affirmative defenses:

1. The Petition to Cancel fails to state a claim upon which relief can be granted.
2. Petitioner's claims are barred by laches, acquiescence, estoppel and waiver based upon Petitioner's delay in objecting to Registrant's use and registration of the mark SOUNDSET.

WHEREFORE, Registrant, Soundset, LLC requests that this Petition to Cancel be dismissed.

Dated: August 20, 2013

Respectfully submitted,

SOUNDSET, LLC

/s/ Luke W. DeMarte

By: _____
One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 20, 2013 the foregoing Answer to Petition to Cancel, was served upon Petitioner's attorney by depositing a copy of said document in the U.S. mail in an envelope addressed to:

Kenneth C. Booth
Booth Udall Fuller, PLC
1255 W Rio Salado Parkway, Suite 215
Tempe, AZ 85281

/s/ Luke W. DeMarte

Luke W. DeMarte