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

Proceeding	92057609
Party	Defendant Kathy L. Knapp
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Submission	Other Motions/Papers
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Signature	/s/ Kathy L. Knapp
Date	10/29/2013
Attachments	Amended Answer Knapp Amended Answer to Cancellation Petition FINAL.pdf(47420 bytes)

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

In the matter of Trademark Registration No.: 3549646
Date of Issue: December 23, 2008
Trademark: ANOVIA

Ginger Ann Scherbarth)	
	Petitioner,)	
)	
)	
v.)	Cancellation No. 92057609
)	
Kathy L. Knapp)	
	Registrant.)	
)	

REGISTRANT'S AMENDED ANSWER TO PETITION FOR CANCELLATION

Registrant, Kathy L. Knapp, hereby responds to the petition for cancellation as follows:

As a threshold matter, Registrant denies the unnumbered allegation of damage in the Petition's preface.

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 and therefore denies the same.
2. Registrant admits the allegations in Paragraph 2.
3. Registrant lacks knowledge or information sufficient to form a belief as to truth or falsity of the allegations of paragraph 3 and therefore denies the same.
4. Registrant admits that Petitioner filed an application to register ANOVIA as a service mark almost eleven years after Petitioner alleges that she first used such mark and that she attached the TSDR Status Report for her application as Exhibit A to the Petition. Registrant is without knowledge

or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 4 and therefore denies the same.

5. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 5 and therefore denies the same.

6. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 6 and therefore denies the same.

7. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 7 and therefore denies the same.

8. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 8 and therefore denies the same.

9. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 9 and therefore denies the same.

10. Registrant denies the allegations of paragraph 10.

11. Registrant admits the allegations in Paragraph 11.

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12. Registrant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 12 and therefore denies the same.

13. Registrant admits the allegations of paragraph 13.

14. Registrant denies the allegations of paragraph 14.

15. Registrant denies the allegations of paragraph 15.

16. Registrant denies the allegations of paragraph 16.

17. Registrant denies the allegations of paragraph 17.

18. Registrant denies the allegations of paragraph 18.

AFFIRMATIVE DEFENSES

Registrant asserts the following affirmative defenses to the Petition for Cancellation:

1. The Petition fails to state any claim upon which relief may be granted.
2. Petitioner is barred from seeking cancellation of the Registrant's trademark under the equitable doctrines of laches and estoppel. Petitioner claims to have been using mark since at least as early as September 1, 2002 which is approximately 11 years ago. Registrant's mark was published for opposition October 7, 2008 and has been a public record for five years. Moreover, under 15 U.S.C. § 1072, Petitioner has had at least constructive knowledge of Registrant's claim of ownership of the trademark since December 23, 2008, when Registrant's ANOVIA mark issued on the principal register. Petitioner was well aware of the trademark process and even filed for a different mark on November 17, 2010 which was subsequently registered. Nevertheless and on the eve of the five year uncontestability of the mark, Petitioner seeks to cancel Registrant's trademark. Petitioner's delay in seeking cancellation is unreasonable under the circumstances and will cause great prejudice to Registrant. Registrant's prejudice at trial in this matter based on the loss of evidence or memory of witnesses and economic prejudice associated with Registrant's investment in marketing and branding services associated with Registrant's mark and the loss of time and foregone opportunity threatened by Petitioner's belated challenge. Petitioner's failure to timely seek cancellation, sitting on its rights for nearly five years while leading Registrant to believe Petitioner would not act, bars Petitioner's claims under the equitable doctrines of laches and estoppel.
3. Petitioner has acquiesced in Registrant's adoption, registration and use of the mark that is the subject of the petition for cancellation by waiting approximately 11 years to assert rights. Registrant's mark was published for opposition October 7, 2008 and has been a

public record for more than five years.

4. There is no likelihood of confusion between Registrant's use of the trademark and that of Petitioner. In approximately five years of concurrent use, there has never been an instance of actual confusion by a consumer that confused the goods and services associated with those of Registrant's trademark and those offered under Petitioner's mark. Additionally, buyers of consulting services are careful, sophisticated purchasers who take great care in selecting an appropriate consultant and are unlikely to confuse the services offered by the Petitioner with the services offered by the Registrant.

5. Petitioner actually uses its mark only on a small, specific subset of consulting services covered by the broad identification of services in its application, namely human resources consulting, and there is no likelihood of confusion with Registrant's use of the ANOVIA mark for strategic advisory services, which are a specific subset of business management consulting substantially different than the services offered by Petitioner.

6. Petitioner is not a senior user of the mark because it cannot establish continuous use prior to the filing date of Registrant's trademark application.

WHEREFORE, Registrant prays that the Cancellation be dismissed with prejudice.

Respectfully Submitted,

/s/ Kathy L. Knapp

Kathy L. Knapp
Registrant
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Date: October 29, 2013

Cancellation No. 92057609

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the USPTO Trademark Trial and Appeal Board through ESTTA for filing in the following proceeding:

Cancellation No. 92057609
Ginger Ann Scherbarth v. Kathy L. Knapp
For the mark: ANOVIA
Registration No. 3549646

Dated October 29, 2013

/s/ Kathy L. Knapp
Kathy L. Knapp
Registrant

Cancellation No. 92057609

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **REGISTRANT'S AMENDED ANSWER TO PETITION FOR CANCELLATION** was served on counsel for petitioner by sending the same via email to scole@graydon.com , this 29th day of October, 2013 to:

scole@graydon.com
Stacy A. Cole
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/s/ Kathy L. Knapp
Kathy L. Knapp
Registrant