

ESTTA Tracking number: **ESTTA575049**

Filing date: **12/06/2013**

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

Proceeding	92057938
Party	Defendant Sensa Products LLC
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Date	12/06/2013
Attachments	Opp to SECOND Motion to Amend Petition for Cancellation (12-6-13) (SENSA 479).pdf(155788 bytes)

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

SENSA, Inc.,)	
)	Cancellation No. 92057938
)	
Opposer,)	
)	Mark: SENSEA
v.)	Serial No. 77388012
)	Filing Date: February 4, 2008
Sensa Products LLC,)	Registration No. 3613479
)	Registration Date: April 28, 2009
)	
Applicant.)	
)	
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)	

**OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION
FOR CANCELLATION AND ANSWER TO SECOND AMENDED PETITION**

Registrant Sensa Products, LLC (“Respondent”), by and through counsel, hereby opposes petitioner SENSEA, Inc.’s (“Petitioner”) second Motion to Amend its Petition for Cancellation (“Motion”), which was filed with ESTTA on December 4, 2013, for the reasons set forth below. In the alternative and only if the Board grant Petitioner’s Motion, Respondent provides its Answer to Petitioner’s Second Amended Petition for Cancellation herein, for the sake of expediency in this matter and to preserve its rights.

**A. THE PROPOSED SECOND AMENDED PETITION FOR CANCELLATION IS
UNTIMELY AND WITHOUT RESPONDENT’S CONSENT**

T.B.M.P. § 507 states that a party may amend its pleadings once as a matter of course within 21 days after service of a responsive pleading. Leave of the Board is not required for such amendment. Thereafter, a party may amend its pleading only by written consent of every adverse party or by leave of the Board. See T.B.M.P. § 507(b) Petitioner filed its original Petition

for Cancellation on September 27, 2013 ("Petition"). Respondent filed its Answer on October 22, 2013, and, within the allotted 21-day window to file an amended petition, Petitioner filed a motion for leave to amend / Amended Petition for Cancellation on November 2, 2013 ("Amended Petition"). Respondent opposed this motion and Amended Petition on November 15, 2013 on the basis that leave was not required and there were no material changes from the original Petition. The Board has not yet ruled on this motion, or taken steps to suspend proceedings while it considers the motion.

Petitioner's present Motion seeks leave to file a second Amended Petition for Cancellation, well outside of the 21-day allotted period, and also beyond the one amendment allowed to parties as a matter of course in TTAB proceedings. T.B.M.P. § 507. It is also inappropriate for Petitioner to seek the Board's leave to file a second Amended Petition at this juncture, because the Board has not yet ruled on Petitioner's first request for leave to file an Amended Petition of November 2, 2013.

Furthermore, Petitioner has not sought Respondent's consent to file a second Amended Petition, nor would consent be granted at this stage in the proceeding. In fact, the parties held their discovery conference on December 5, 2013 and are in the process of preparing for discovery. Petitioner apparently believes he has unlimited opportunities to present a well-pleaded case concerning his claimed rights in the "SENSA" mark, even after the parties begin discovery preparations. Petitioner's failure to understand, and follow, the rules of this tribunal should not be allowed to stand, costing Respondent, time and legal fees, and interfering with Respondent's ability to prepare a proper defense. Accordingly, Board should deny Petitioner's Motion and strike the (proposed) Second Amended Petition for Cancellation from the record in this matter.

B. IN THE ALTERNATIVE, RESPONDENT HEREBY ANSWERS PETITIONER'S SECOND AMENDED PETITION FOR CANCELLATION

If the Board is unwilling to strike Petitioner's pleading, or grants Petitioner's Motion, and rules that Petitioner's Second Amended Petition for Cancellation was filed as of December 4, 2013, Respondent understands it would be required to file its answer to Petitioner's Amended Petition for Cancellation within 14 days after service thereof – i.e. on or before December 18, 2013. See T.B.M.P. § 507.01. In this situation only, Respondent requests that the Board accept Respondent's Answer to Petitioner's (proposed) Second Amended Petition for Cancellation as stated here: :

ANSWER TO (AMENDED) PETITION FOR CANCELLATION

Respondent Sensa Products, LLC ("Respondent"), by and through its attorneys, denies that its U.S. Trademark Registration No. 3583092 (the "Registration") infringes or dilutes any purported rights in Petitioner Sensa, Inc.'s ("Petitioner") U.S. Trademark Registration No. 2027431 ("Petitioner's Mark"), and further denies that Petitioner is and/or will be damaged by the continued registration of the Registration. Respondent hereby answers Petitioner's (Amended) Petition for Cancellation as follows:

1. Respondent admits that Petitioner appears to be listed as the owner of U.S. Registration No. 2027431 for the word mark SENSEA in Class 3 for personal lubricant on the USPTO website. Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in numbered paragraph 1 concerning Petitioner's business, and therefore denies those statements in numbered paragraph 1. Except as expressly admitted, Respondent denies the remainder of numbered paragraph 1.

2. Respondent denies numbered paragraph 2.
3. Respondent denies the first sentence of numbered paragraph 3. The second and third sentences of numbered paragraph 3 contain averments in the form of unintelligible statements and Respondent lacks knowledge sufficient to form a belief as to the truth of these averments, and therefore denies them.

AFFIRMATIVE DEFENSES

Failure to State a Claim for Relief

1. Petitioner has failed to state facts sufficient to constitute a basis for relief as Respondent is the owner of record for the Registration, and there is no likelihood of confusion with or dilution of Petitioner's Mark.

Waiver

2. Petitioner's alleged claims are barred by the doctrine of waiver.

Laches

3. Petitioner's alleged claims are barred by the doctrine of laches.

Estoppel

4. Petitioner's alleged claims are barred by the doctrine of estoppel.

Acquiescence

5. Petitioner's alleged claims are barred by the doctrine of acquiescence.
6. Respondent gives notice that it intends to rely on any additional affirmative defenses that become available or apparent through discovery and the factual development in this case or otherwise, and thus reserves the right to amend this Answer to assert such additional and/or different defenses.

WHEREFORE, Respondent prays that the (Amended) Petition for Cancellation be denied and that judgment be entered in favor of Respondent.

Dated: December 6, 2013

Respectfully Submitted,

IP LEGAL ADVISORS, P.C.

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Certificate of Service

I hereby certify that on December 6, 2013, a copy of the foregoing was sent by U.S. mail to the following correspondent of record:

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1401 BAY ROAD SUITE 310
MIAMI BEACH, FL 33139-3781

/Eunice Yu/

Eunice Yu