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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	04/18/2014
Attachments	Answer to Second Amended Petition for SENSA -30 ('479).pdf(104189 bytes )

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

SENSA, Inc.,	)	
	)	Cancellation No. 92057938
	)	
Opposer,	)	(Consolidated; Child of Cancellation
	)	No. 92057934)
v.	)	
	)	Mark: SENSEA
Sensa Products LLC,	)	Serial No. 77388012
	)	Filing Date: February 4, 2008
	)	Registration No. 3613479
Applicant.	)	Registration Date: April 28, 2009
	)	
	)	
	)	
	)	

**ANSWER TO SECOND AMENDED PETITION FOR CANCELLATION**

Registrant Sensa Products, LLC (“Respondent”), by and through counsel, hereby provides its Answer to Petitioner SENSEA, Inc.’s (“Petitioner”)’s Second Amended Petition for Cancellation:

Respondent, by and through its attorneys, denies that its U.S. Trademark Registration No. 3613479 (the “Registration”) infringes or dilutes any purported rights in Petitioner’s 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 Second Amended Petition for Cancellation as follows:

1. (1) Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in numbered paragraph 1, first paragraph, concerning Petitioner’s business, and therefore denies those statements in numbered paragraph 1,

first paragraph. Except as expressly admitted, Respondent denies the remainder of numbered paragraph 1, first paragraph.

(2) 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 denies that Petitioner has “priority of rights” with regard to the Registration, or Respondent’s U.S. Registration Nos. 3583092 and 4305929. Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in numbered paragraph 1, second paragraph, concerning Petitioner’s “use in commerce” of Registration No. 2027431, and therefore denies those statements in numbered paragraph 1, second paragraph. Except as expressly admitted, Respondent denies the remainder of numbered paragraph 1, second paragraph.

(3) Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in numbered paragraph 1, third paragraph, concerning the alleged display and sale of Petitioner’s “SENSEA-branded personal lubricant products in select Walgreens stores,” and therefore denies those statements in numbered paragraph 1, third paragraph. Except as expressly admitted, Respondent denies the remainder of numbered paragraph 1, third paragraph.

(4) Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in numbered paragraph 1, fourth paragraph, and therefore denies numbered paragraph 1, fourth paragraph.

(5) Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in the first three sentences of numbered paragraph 1, fifth paragraph, and therefore denies the first three sentences of numbered paragraph 1,

fifth paragraph. Sentence four of numbered paragraph 1, fifth paragraph (“Registrant, SENSA mark...”) contain averments in the form of incomprehensible and unintelligible statements, and Respondent lacks knowledge sufficient to form a belief as to the truth of these averments, and therefore denies them.

2. By an order issued on March 31, 2014, the Board has sua sponte stricken numbered paragraph 2, regarding dilution from Petitioner’s Second Amended Petition for Cancellation. Accordingly, no response to numbered paragraph 2 is warranted.

3. Respondent denies the first sentence of numbered paragraph 3. Respondent is without knowledge or information sufficient to form a belief as to the truth of statements made in the second sentence in numbered paragraph 3, and therefore denies the second sentence of numbered paragraph 3. Respondent admits that its U.S. Trademark Registration No. 3613479 is registered in connection with “dietary food additives sold to end consumers that consumers add to foods to enhance the smell, taste, and flavor of foods for weight loss and weight management” in Class 30. The remaining statements in the third sentence of numbered paragraph 3 are unintelligible and Respondent is without knowledge or information sufficient to form a belief as to the truth of the same, and therefore denies the remaining statements made in the third sentence of numbered paragraph 3.

**AFFIRMATIVE DEFENSES**

Respondent hereby asserts its affirmative defenses against Petitioner without prejudice to its right to later amend and raise additional affirmative defenses or add counterclaims after further investigation and discovery is completed.

**FIRST AFFIRMATIVE DEFENSE**

**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 Petitioner's Mark.

SECOND AFFIRMATIVE DEFENSE

Waiver

2. Respondent has been in business selling dietary food additives under the "SENSA" name since at least as early as June 16, 2008, and these branded products have become very well known as a result of Respondent's marketing and advertising efforts. Petitioner alleges that it has sold personal lubricant products since 1996, and thus has been aware or should have been aware of Respondent years ago. Petitioner's inaction constitutes waiver, and thus Petitioner's alleged claims are barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

Laches

3. Respondent has been in business selling dietary food additives under the "SENSA" name since at least as early as June 16, 2008, and these branded products have become very well known as a result of Respondent's marketing and advertising efforts. Petitioner was aware or should have been aware of Respondent years ago. Petitioner has delayed, for an unreasonable period of time, in asserting its alleged claims against Respondent and those delays have prejudiced Respondent. Accordingly, Petitioner's alleged claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Estoppel

4. Respondent has been in business selling dietary food additives under the "SENSA" name since at least as early as June 16, 2008, and these branded products have become

very well known as a result of Respondent's marketing and advertising efforts. Petitioner was aware or should have been aware of Respondent years ago. Petitioner has failed to take reasonable efforts to enforce its alleged rights in SENSA (Reg. No. 2027431). Accordingly, Petitioner's alleged claims are barred by the doctrine of estoppel.

#### FIFTH AFFIRMATIVE DEFENSE

##### Acquiescence

5. Respondent has been in business selling dietary food additives under the "SENSA" name since at least as early as June 16, 2008, and these branded products have become very well known as a result of Respondent's marketing and advertising efforts. Petitioner was aware or should have been aware of Respondent years ago. Accordingly, Petitioner has acquiesced to Respondent's use of the "SENSA" name in connection with the registered goods, and Petitioner's alleged claims are barred by the doctrine of acquiescence.

#### SIXTH AFFIRMATIVE DEFENSE

##### No Likelihood of Confusion

6. Respondent's SENSA Marks (i.e. U.S. Registration Nos. 3613479, 3583092, and 4305929) as used in connection with Respondent's goods are not likely to cause confusion or to cause mistake or deceive under Section 2(d) of the Lanham Act, because Respondent's goods are different from those of Petitioner.

#### SEVENTH AFFIRMATIVE DEFENSE

##### Abandonment

7. On information and belief, Petitioner has not made bona fide use of SENSA (Reg. No. 2027431) in the ordinary course of business for many years, and does not have the intent to resume bona fide use of SENSA. Petitioner has only made recent, token use of SENSA in the context of maintaining its position in the present litigation against Respondent. Accordingly,

Petitioner's alleged claims are barred on the grounds that Petitioner's SENSEA mark (Reg. No. 2027431) has been abandoned.

EIGHTH AFFIRMATIVE DEFENSE

Unclean Hands

7. On information and belief, Petitioner has not made bona fide use of SENSEA (Reg. No. 2027431) in the ordinary course of business for many years. Petitioner began making token use of SENSEA in connection with personal lubricants and associated goods for purposes of the present litigation against Respondent and to extort a settlement from Respondent. Accordingly, Petitioner's alleged claims are barred on the grounds of unclean hands.

WHEREFORE, Respondent prays that Petitioner take nothing by its Second Amended Petition for Cancellation and that the same be denied and dismissed with prejudice.

Dated: April 18, 2014

Respectfully Submitted,

IP LEGAL ADVISORS, P.C.

By:

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**Certificate of Service**

I hereby certify that on April 18, 2014, a copy of the foregoing was sent by U.S. mail to the following correspondent of record:

TIMOTHY M MACIVOR  
SENSA INC  
1401 BAY ROAD SUITE 310  
MIAMI BEACH, FL 33139-3781

/Eunice Yu/

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Eunice Yu