

ESTTA Tracking number: **ESTTA588846**

Filing date: **02/24/2014**

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

Proceeding	92058052
Party	Defendant Charles Bugatti
Correspondence Address	CHARLES BUGATTI 4818 SWEETMEADOW CIRCLE SARASOTA, FL 34238 UNITED STATES rcathcart@ladas.com,rroa@ladas.com,mmercado@ladas.com
Submission	Answer
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Date	02/24/2014
Attachments	Answer to Petition to Cancel - Bugatti - Child.pdf(378888 bytes)

4. Respondent admits the allegations set forth in paragraph 3 of the Petition to Cancel, except denies that Charles Bugatti resides or has an address at 4818 Sweetmeadow Circle, Sarasota, Florida 34238.

5. Respondent admits the allegations set forth in paragraph 4 of the Petition to Cancel.

6. Concerning paragraph 5 of the Petition to Cancel, Respondent admits that Petitioner and Respondent entered into an exclusive trademark License Agreement concerning the use of BUGATTI, and denies the remaining allegations.

7. Concerning paragraph 6 of the Petition to Cancel, Respondent admits that counsel filed a Section 8 and Section 15 Declaration together with specimens provided by Respondent in connection with BUGATTI Registration No. 2,606,320 and respectfully refers the Board to the contents thereof for the statements contained therein.

8. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations, as phrased, in paragraph 7 of the Petition to Cancel.

9. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations, as phrased, in paragraph 8 of the Petition to Cancel

10. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Petition to Cancel, except admits that Respondent's counsel filed Section 8 and 9 renewal documents with the USPTO, and denies that any of the filings were fraudulent.

11. Respondent denies the allegations set forth in paragraph 10 of the Petition to Cancel.

First Affirmative Defense

Petitioner has failed to state a claim upon which relief can be granted as Respondent did not intentionally make materially false statements for the purpose of deceiving the USPTO.

Second Affirmative Defense

Petitioner has failed to plead a fraud cause of action with the requisite particularity required by the Fed. R. Civ. P. Rule 9 and instead relies on unsubstantiated, skeletal allegations, notably “upon information and belief”.

Third Affirmative Defense

If there was any error that occasioned any filings or specimens related to renewal or the incontestability status of BUGATTI Registration No. 2,606,320, such error was occasioned by mistake and not any specific intent to mislead or defraud the USPTO. Accordingly, Petitioner’s allegation of fraud is misplaced. *In re: Bose Corporation*, 91 U.S.P.Q.2d 1938 (Fed. Cir. 2009)

Fourth Affirmative Defense

Petitioner is estopped from seeking cancellation on equitable grounds as it has “unclean hands”. Specifically, as the exclusive licensee, Petitioner was solely responsible for the commercial exploitation, through sub-licensees, of hair care products under the BUGATTI ‘320 Mark. In or about the Spring of 2012, Respondent sought to renegotiate the exclusive license with Petitioner to secure more favorable terms. In response thereto and in retaliation thereof, Petitioner wrongfully filed the instant Petition seeking to cancel Respondent’s BUGATTI “320 Mark so it would not have to pay for the use of same and in order to wrongfully appropriate Respondent’s valuable rights to the BUGATTI ‘320 Mark. Respondent is unaware of any total cessation of use, and certainly intends to resume such use if Petitioner has temporarily allowed use to lapse.

Fifth Affirmative Defense

Petitioner is estopped by written agreement with Respondent from filing this Petition to Cancel. Pursuant to the express terms of the exclusive License Agreement entered into between Petitioner and Respondent, Petitioner is forbidden from attacking the validity of Respondent's BUGATTI '320 Mark. Further, Petitioner was contractually required to provide written notice to Respondent of any alleged breach under the terms of the exclusive License Agreement and the opportunity to cure. Petitioner never provided Respondent with any opportunity to cure, but rather, filed the instant Petition to Cancel. Therefore, by the very terms of the exclusive License Agreement, Petitioner is barred or estopped by contract from attacking the validity of Respondent's BUGATTI Registration and prosecuting the instant cancellation proceeding.

Sixth Affirmative Defense

Petitioner is guilty of laches and waiver. Specifically, Petitioner was responsible for the commercial exploitation of the BUGATTI '320 Mark for more than 10 years. At no time did Petitioner ever state that BUGATTI was not being used at all in connection with hair care products. Upon information and belief, Petitioner was aware for several years of Respondent's filings with the USPTO related to the maintenance of the BUGATTI '320 Mark and never stated that the BUGATTI '320 Mark was not in use in the United States or otherwise objected to same.

For all of the foregoing reasons, Petitioner's Petition to Cancel must be dismissed in its entirety.

Respectfully submitted,
LADAS & PARRY LLP
Attorneys for Registrant

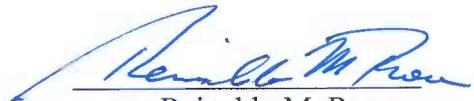
Dated: February 24, 2014

By: 
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CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **ANSWER TO PETITION TO CANCEL** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: February 24, 2014


Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **ANSWER TO PETITION TO CANCEL** was served on the person(s) listed below by First-Class Mail, postage prepaid, on the date indicated:

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Dated: February 24, 2014


Reinaldo M. Roa