

ESTTA Tracking number: **ESTTA584230**

Filing date: **01/28/2014**

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

Proceeding	92058411
Party	Defendant Opici IP Holdings, LLC
Correspondence Address	OPICI IP HOLDINGS, LCC 25 DEBOER DRIVE GLEN ROCK, NJ 07430 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Stephen L. Baker
Filer's e-mail	officeactions@br-tmlaw.com,s.baker@br-tmlaw.com,p.chang@br-tmlaw.com,k.hnasko@br-tmlaw.com,s.cesaro@br-tmlaw.com,k.Drogowski@br-tmlaw.com
Signature	/Stephen L Baker/
Date	01/28/2014
Attachments	SCANS-2-Baker-Rannells140128153917.pdf(55560 bytes)

Registrations Subject to the filing

Registration No	3632812	Registration date	06/02/2009
Registrant	Luxco, Inc. 1000 Clark Avenue St. Louis, MO 63102 MACAU		

Goods/Services Subject to the filing

Class 033. First Use: 2008/09/29 First Use In Commerce: 2008/09/29 All goods and services in the class are requested, namely: liquors and distilled spirits
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Registration No	727786	Registration date	02/20/1962
Registrant	LUXCO, INC. 5050 KEMPER AVENUE ST. LOUIS, MO 63139 MACAU		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 033. First Use: 1937/08/00 First Use In Commerce: 1937/08/00 All goods and services in the class are requested, namely: Straight Bourbon Whiskey

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

In re United States Registration No. 4407601
Filing Date: October 11, 2011
Mark: REBELLION

Luxco, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92058411
)	
Opici IP Holdings LLC,)	
)	
Registrant.)	

**ANSWER AND AFFIRMATIVE DEFENSES
TO PETITION FOR CANCELLATION AND COUNTERCLAIMS**

Registrant, Opici IP Holdings, LLC, (“Registrant”), by and through its attorneys Baker and Rannells, PA, for its Answer, Affirmative Defenses and Counterclaim to the Petition for Cancellation filed by Petitioner, Luxco, Inc. (“Petitioner”), alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

ANSWER

1. Admitted
2. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 2 of the Petition for Cancellation except that it admits the issuance of Registrations for Nos. 727,786 and 3,632,812.

3. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 3 of the Petition for Cancellation and therefore denies the same.
4. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 4 of the Petition for Cancellation and therefore denies the same.
5. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 5 of the Petition for Cancellation and therefore denies the same.
6. The allegations contained in Paragraph 6 of the Petition for Cancellation do not call for a response.
7. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 7 of the Petition for Cancellation and therefore denies the same.
8. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 8 of the Petition for Cancellation and therefore denies the same.
9. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 9 of the Petition for Cancellation and therefore denies the same.
10. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 10 of the Petition for Cancellation and therefore denies the same.

11. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 11 of the Petition for Cancellation and therefore denies the same.
12. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 12 of the Petition for Cancellation and therefore denies the same.
13. Admitted except that it denies Petitioner's prior rights.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied

AFFIRMATIVE DEFENSES

19. Registrant repeats and re-alleges the allegations of paragraphs 1-18 hereof as if set forth fully herein.
20. As and for a first defense, the Petition for Cancellation fails to state a claim upon which relief can be granted
21. As and for a second defense, the Petition for Cancellation is barred by the acquiescence and laches in that the respective marks of the parties coexisted with the knowledge of and without prior legal action from Petitioner.
22. As and for a third defense, the Petition for Cancellation is barred by the doctrine of waiver and estoppel.

23. As and for a forth defense, the Petition for Cancellation is barred by Petitioner's failure to challenge the use of Rebel and/or Rebellion marks on related goods and services by unrelated third parties.

COUNTERCLAIMS FOR CANCELLATION OF

REG. NOS. 0727786 and 3632812

24. Registrant repeats and re-alleges the allegations of paragraphs 1 - 23 hereof as if set forth fully herein.

25. Petitioner is relying in part of on REG. NOS. 0727786 and 3632812 ("Petitioner's Alleged Mark") as the basis of the within cancellation.

26. As and for a first counterclaim, the Petitioner has abandoned its use of Petitioner's Alleged Mark in the United States by engaging in naked licensing of REBEL and/or REBELLION marks used by other parties.

27. As and for a second counterclaim, the Petitioner and/or its alleged predecessor-in-interest have failed to police the use Petitioner's Alleged Mark by unrelated third parties.

28. As and for a third counterclaim, the Petitioner and/or its alleged predecessor-in-interest have failed to police the use REBELLION by unrelated third parties.

29. The continued existence of REG. NOS. 0727786 and 3632812 for Petitioner's Alleged Mark also creates a serious cloud on Registrant's continued right to use the mark sought to be cancelled, alone or in combination, for the goods set forth in its Reg. No. 4407601, which registration is the subject of these proceedings.

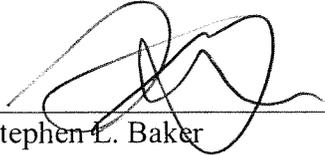
30. Registrant believes that it is and will be damaged by the continued registration of
Petitioner's Alleged Mark to Registrant.

WHEREFORE, Petitioner requests that the petition to cancel Registration No. 4407601
be denied and that REG. NOS. 0727786 and 3632812 be canceled

Dated: January 28, 2014

BAKER AND RANNELLS, PA

By:



Stephen L. Baker
Attorney for Registrant
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO PETITION FOR CANCELLATION AND COUNTERCLAIMS has been served on Petitioner by first class mail this 28th day of January 2014:

Michael R. Annis
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63108



Stephen L. Baker