

ESTTA Tracking number: **ESTTA583614**

Filing date: **01/23/2014**

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

Proceeding	92058448
Party	Defendant Cary Hensley
Correspondence Address	CARY HENSLEY 180 MADISON AVE , SUITE 1501 NEW YORK, NY 10016 UNITED STATES trademarksemv@gmail.com
Submission	Answer
Filer's Name	Bruce T. Margulies
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Date	01/23/2014
Attachments	Answer_MSTM0012T-US_1-15-2013c.pdf(27578 bytes)

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

In the matter of Petition to Cancel No. 92058448

Registration No. 4395373

Trademark: EINSTÖK

Einstok Beer Company, L.P.

Petitioner

v.

Cary Hensley,

Registrant

REGISTRANT'S ANSWER

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Now comes the Registrant, Cary Hensley, who answers the grounds for the petition to cancel as follows:

1. Admitted.
2. Admitted with respect to “beer”, based upon information and belief. Denied with respect to “offering” clothing under the brand name EINSTÖK, and particularly denied with respect to any implication that Petitioner has used the mark EINSTÖK in commerce for clothing.
3. Admitted, based upon information and belief.
4. Denied with respect to there being no issue regarding priority. As for the dates noted, the Registration and Application documents speak for themselves. Attachment 1 is a true and correct copy of Registration No. 4,395,373. Attachment 2 is a true and correct copy of Application No. 85/817,027.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. The document comprising Attachment 2 speaks for itself.
14. Denied; and denied in particular because “the EINSTÖK mark” is ambiguous.
15. Denied.
16. The document comprising Attachment 2 speaks for itself.
17. Denied.
18. Denied.
19. Denied.
20. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

21. Petitioner's claims are barred by the doctrines of acquiescence and laches.
22. Registrant has openly been using its EINSTÖK Mark in commerce since at least as early as September 1, 2012.
23. Application No. 85/817,027 was published by the USPTO for Opposition on June 18, 2013.
24. Petitioner took no action to oppose Application No. 85/817,027.

Second Affirmative Defense

25. Petitioner has failed to use EINSTÖK as a mark in commerce for clothing prior to the effective date of Registrant's EINSTÖK Mark.
26. If Petitioner's purported use of EINSTÖK as a mark for clothing were to rise to trademark use, such use would violate the Lanham Act, as it would be likely to result in confusion, mistake, or deception with Registrant's EINSTÖK Mark, or in the belief that Petitioner or its goods were in some way legitimately connected with, licensed or approved by Registrant.

Wherefore, the Registrant respectfully submits that the petition to cancel be dismissed.

Respectfully submitted,

/BruceMargulies/
Bruce T. Margulies

1/23/2014
Date

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Attorney of Record for Registrant

Certificate of Service

I certify that on the date noted below, I caused a copy of the foregoing Registrant's
Answer to be transmitted by First Class U.S. Mail to the Petitioner at the following address:

KEITH A WELTSCH
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GARDEN CITY, NY 11530

1/23/2014
Date

/BruceMargulies/
Bruce T. Margulies