

ESTTA Tracking number: **ESTTA608427**

Filing date: **06/05/2014**

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

Proceeding	92059160
Party	Defendant HP53 Manager LLC
Correspondence Address	HP53 MANAGER LLC 824 WEST SUPERIOR, SUITE 210 CHICAGO, IL 60642-8083 UNITED STATES
Submission	Answer
Filer's Name	Alexa L. Lewis
Filer's e-mail	all@msk.com, kls@msk.com, gxb@msk.com
Signature	/s/ Alexa L. Lewis
Date	06/05/2014
Attachments	92059160 - Answer to Petition to Cancel (6195368).pdf(45394 bytes)

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

D.O.C. Restaurant Group, LLC DBA A16
Restaurant and Wine Bar,

Petitioner,

v.

HP53 Manager LLC,

Respondent.

Cancellation No.: 92059160

Reg. No.: 4,462,551

Mark: A10

ANSWER

HP53 Manager LLC (“HP53”) answers the Petition to Cancel filed by D.O.C. Restaurant Group, LLC DBA A16 Restaurant and Wine Bar (“D.O.C.”) as follows.

1. HP53 admits the allegations in paragraph 1.
2. HP53 admits the allegations in paragraph 2.
3. HP53 is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3, and on that basis, denies each and every such allegation.
4. The allegations of paragraph 4 constitute and/or are founded upon legal conclusions and HP53 therefore denies them on those grounds. To the extent not addressed by the foregoing, HP53 is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, and on that basis, denies each and every such allegation.
5. HP53 admits the allegations in the second sentence of paragraph 5. The allegations of the first and third sentences of paragraph 5 constitute and/or are founded upon

legal conclusions and HP53 therefore denies them on those grounds. To the extent not addressed by the foregoing, HP53 is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of paragraph 5, and on that basis, denies each and every such allegation.

6. HP53 is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and on that basis, denies each and every such allegation.

7. HP53 is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and on that basis, denies each and every such allegation.

8. HP53 denies the allegations in paragraph 8.

9. HP53 denies the allegations in paragraph 9.

10. HP53 denies the allegations in paragraph 10.

11. The allegations of paragraph 11 constitute and/or are founded upon legal conclusions and HP53 therefore denies them on those grounds. To the extent not addressed by the foregoing, HP53 states that Exhibit A speaks for itself, and that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11, and on that basis, denies each and every such allegation.

12. HP53 admits that it holds exclusive rights to use of A10, but denies the remaining allegations in paragraph 12.

AFFIRMATIVE DEFENSES

In further Answer to the Petition, HP53 asserts the following affirmative defenses, and reserves all other affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case. By asserting these

matters as affirmative defenses, HP53 does not admit these matters are in fact affirmative defenses upon which HP53 bears the burden of proof rather than defenses on which Petitioner bears the burden of proof.

FIRST AFFIRMATIVE DEFENSE

Failure To State A Claim

1. The Petition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Waiver, Estoppel, Laches, Acquiescence

2. Petitioner cannot assert or obtain relief on the Petition based on the doctrines of estoppel, waiver, laches, and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

Unclean Hands

3. The Petition should be dismissed because Petitioner has unclean hands, is acting in bad faith, and is pursuing the Petition for an improper purpose.

FOURTH AFFIRMATIVE DEFENSE

Standing

4. Petitioner lacks standing to seek cancellation of HP53's registration, as Petitioner has no basis for believing that it is or will be damaged by HP53's registration.

REQUESTED RELIEF

WHEREFORE, HP53, having answered D.O.C.'s Petition to Cancel, requests that:

1. D.O.C.'s petition be denied in its entirety.
2. HP53 be granted such other relief as the Board deems just and equitable under the circumstances.

Respectfully submitted,

Date: June 5, 2014

HP53 MANAGER LLC

By: Alexa L. Lewis

Alexa L. Lewis
Mitchell Silberberg & Knupp LLP
11377 West Olympic Blvd.
Tel: (310) 312-3209
Fax: (310) 312-3200
Attorneys for Respondent

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a) on June 5, 2014.


Kimberly Stewart

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **ANSWER OF RESPONDENT, HP53 MANAGER LLC, TO D.O.C. RESTAURANT GROUP, LLD DBA A16 RESTAURANT AND WINE BAR'S PETITION TO CANCEL** was served on June 5, 2014, by first-class mail, postage prepaid, on the following counsel for Applicant:

Beth M Goldman
Orrick Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105


Kimberly Stewart