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

Proceeding	92059488
Party	Defendant Anta (China) Co., Ltd.
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Date	02/29/2016
Attachments	92059488 - Answer to First Amended Petition for Cancellation.pdf(205912 bytes)

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

BROOKS SPORTS, INC.,

Petitioner,

v.

ANTA (CHINA) CO. LTD.,

Respondent.

Cancellation No.: 92059488

ANSWER TO FIRST AMENDED PETITION
FOR CANCELLATION

Mark: ANTA & LOGO

Registration No.: 2,750,817

Now comes Respondent, Anta (China) Co. Ltd. (“Respondent”), by and through its counsel, and, for its Answer to the First Amended Petition for Cancellation filed by Brooks Sports, Inc. (“Petitioner”) in connection with the mark  (“Registered Mark”) registered in International Class 25 and covering those goods (“Registered Goods”) listed in Registration No. 2,750,817 (“Registration”), Respondent states as follows:

I. PARTIES

1. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the First Amended Petition for Cancellation.
2. Respondent admits the allegations of paragraph 2 of the First Amended Petition for Cancellation.

II. THE REGISTERED MARK AND REGISTRATION

3. Respondent admits the allegations of paragraph 3 of the First Amended Petition for Cancellation.
4. Respondent admits the allegations of paragraph 4 of the First Amended Petition for Cancellation.

5. Respondent admits the allegations of paragraph 5 of the First Amended Petition for Cancellation.

6. Respondent admits the allegations of paragraph 6 of the First Amended Petition for Cancellation.

7. Respondent admits the allegations of paragraph 7 of the First Amended Petition for Cancellation.

8. Respondent admits the allegations of paragraph 8 of the First Amended Petition for Cancellation.

9. Respondent admits the allegations of paragraph 9 of the First Amended Petition for Cancellation.

10. Respondent admits the allegations of paragraph 10 of the First Amended Petition for Cancellation.

11. Respondent admits the allegations of paragraph 11 of the First Amended Petition for Cancellation.

12. Respondent admits the allegations of paragraph 12 of the First Amended Petition for Cancellation.

13. Respondent admits the allegations of paragraph 13 of the First Amended Petition for Cancellation.

14. Respondent admits the allegations of paragraph 14 of the First Amended Petition for Cancellation.

III. CLAIMS

A. ABANDONMENT

15. Respondent incorporates by reference its answers to paragraphs 1-14 of the First Amended Petition for Cancellation.

16. Respondent denies the allegations of paragraph 16 of the First Amended Petition for Cancellation.

17. Respondent denies the allegations of paragraph 17 of the First Amended Petition for Cancellation.

18. Respondent denies the allegations of paragraph 18 of the First Amended Petition for Cancellation.

19. Respondent denies the allegations of paragraph 19 of the First Amended Petition for Cancellation.

20. Respondent denies the allegations of paragraph 20 of the First Amended Petition for Cancellation.

B. REGISTERED MARK NOT IN USE

21. Respondent incorporates by reference its answers to paragraphs 1-20 of the First Amended Petition for Cancellation.

22. Respondent denies the allegations of paragraph 22 of the First Amended Petition for Cancellation.

23. Respondent denies the allegations of paragraph 23 of the First Amended Petition for Cancellation.

24. Respondent denies the allegations of paragraph 24 of the First Amended Petition for Cancellation.

25. Respondent denies the allegations of paragraph 25 of the First Amended Petition for Cancellation.

26. Respondent denies the allegations of paragraph 26 of the First Amended Petition for Cancellation.

27. Respondent denies the allegations of paragraph 27 of the First Amended Petition for Cancellation.

28. Respondent denies the allegations of paragraph 28 of the First Amended Petition for Cancellation.

29. Respondent denies the allegations of paragraph 29 of the First Amended Petition for Cancellation.

30. Respondent denies the allegations of paragraph 30 of the First Amended Petition for Cancellation.

C. FRAUD ON THE TRADEMARK OFFICE

31. Respondent incorporates by reference its answers to paragraphs 1-30 of the First Amended Petition for Cancellation.

32. Respondent denies the allegations of paragraph 32 of the First Amended Petition for Cancellation.

33. Respondent denies the allegations of paragraph 33 of the First Amended Petition for Cancellation.

34. Respondent denies the allegations of paragraph 34 of the First Amended Petition for Cancellation.

35. Respondent denies the allegations of paragraph 35 of the First Amended Petition for Cancellation.

36. Respondent denies the allegations of paragraph 36 of the First Amended Petition for Cancellation.

37. Respondent denies the allegations of paragraph 37 of the First Amended Petition for Cancellation.

38. Respondent denies the allegation regarding a false statement and states that the remaining allegations of paragraph 38 of the First Amended Petition for Cancellation assert a legal conclusion to which no response is required.

39. Respondent denies the allegations of paragraph 39 of the First Amended Petition for Cancellation.

40. Respondent denies the allegations of paragraph 40 of the First Amended Petition for Cancellation.

41. Respondent denies the allegations of paragraph 41 of the First Amended Petition for Cancellation.

42. Respondent denies the allegations of paragraph 42 of the First Amended Petition for Cancellation.

43. Respondent denies the allegations of paragraph 43 of the First Amended Petition for Cancellation.

44. Respondent denies the allegation regarding a false statement and states that the remaining allegations of paragraph 44 of the First Amended Petition for Cancellation assert a legal conclusion to which no response is required.

45. Respondent denies the allegations of paragraph 45 of the First Amended Petition for Cancellation.

46. Except as otherwise admitted above, the allegations in the First Amended Petition for Cancellation are denied.

AFFIRMATIVE DEFENSES

A. FAILURE TO PROVIDE NECESSARY INFORMATION

1. In paragraph 19 of the First Amended Petition for Cancellation, Petitioner alleges that “[t]he continued registration of the Registered Mark would prevent Petitioner from

exercising exclusive control over the goodwill and reputation associated with Petitioner's marks."

2. However, in the First Amended Petition for Cancellation Petitioner fails to identify a single one of its own marks.

3. Nor does Petitioner state when, where, why, and how the continued registration of the Registered Mark would prevent Petitioner from exercising exclusive control over any goodwill and reputation associated with Petitioner's marks, whatever those marks may be.

4. Most notably, Petitioner does not allege any way in which the Registered Mark—the Registration for which has been incontestable since September 3, 2008, and therefore is subject to cancellation only on narrow grounds—could interfere with whatever rights Petitioner may have in its unidentified marks.

5. Thus, Respondent has no way of evaluating the basis of Petitioner's allegations with respect to Petitioner's unidentified marks, determining the truth or falsity of those allegations, or making any substantive response to them.

B. LACHES

6. The Registered Mark has been registered since August 12, 2003, based on an application filed in 2000.

7. Petitioner did not oppose the application that matured into the Registration.

8. Petitioner has never before petitioned to cancel the Registration.

9. Upon information and belief, Petitioner has had actual knowledge of the Registered Mark since at least as early as 2009.

10. Petitioner has unreasonably delayed in asserting its alleged rights against Respondent, thereby causing material prejudice to Respondent that is attributable to the delay.

C. EQUITABLE ESTOPPEL

11. By its silence and inaction with respect to the Registered Mark since the Registration was granted in 2003, Petitioner has led Respondent reasonably to infer that Petitioner will not assert any rights against Respondent with respect to the Registered Mark.

12. Respondent has relied on the silence and inaction of Petitioner with respect to the Registered Mark.

13. Due to this reliance, Respondent will suffer material prejudice if Petitioner's delayed assertion of its rights is permitted.

D. ACQUIESCENCE

14. By allowing Respondent to use the Registered Mark in commerce, to maintain the Registration, and to renew the Registration, all without Petitioner's previously petitioning to cancel the Registration, Petitioner has acquiesced in Respondent's use and continued registration of the Registered Mark.

15. Respondent has relied on the acquiescence of Petitioner with respect to the Registered Mark.

16. Due to Petitioner's acquiescence, Respondent will suffer material prejudice if Petitioner's delayed assertion of its rights is permitted.

E. UNCLEAN HANDS

17. Upon information and belief, Petitioner has proposed to Respondent a business arrangement through which Petitioner and Respondent could collaborate to sell in China goods branded with one or more of Petitioner's marks.

18. Respondent has not accepted Petitioner's proposal and in fact has raised objections to it.

19. Upon information and belief, Petitioner has brought this cancellation proceeding at least in part in an attempt to compel Respondent to accept Petitioner's proposal.

20. Petitioner's use of this cancellation proceeding to gain leverage in its negotiations with Respondent constitutes unclean hands.

F. RESPONDENT ENTITLED TO RESTRICTED REGISTRATION

21. Even if the Trademark Trial and Appeal Board determines that Respondent is not entitled to maintain the Registration for all of the Registered Goods, Respondent is, as an alternative, at least entitled to a registration for the Registered Mark that includes some of the Registered Goods.

22. Because Petitioner has not identified any of its own marks or goods, Respondent is not able at this time to identify which goods among the Registered Goods should or should not be included in a restricted Registration, if any such registration were to result from this cancellation proceeding.

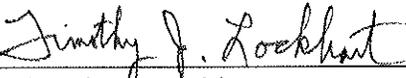
23. However, Respondent hereby gives fair and early notice to Petitioner that Respondent is raising the prospect of a restricted Registration as a defense to the First Amended Petition for Cancellation.

WHEREFORE, Respondent respectfully requests that the Trademark Trial and Appeal Board deny the First Amended Petition for Cancellation, dismiss this proceeding with prejudice, and grant to Respondent such other and further relief as the Board deems just and proper.

Dated: February 29, 2016

Respectfully submitted,

ANTA (CHINA) CO. LTD.

By 

Timothy J. Lockhart

Brett A. Spain

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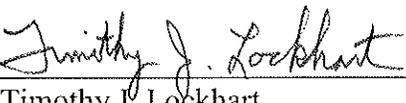
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to First Amended Petition for Cancellation has been served on Books Sports, Inc. by mailing said copy on February 29, 2016, via First-Class Mail, postage prepaid, to:

William C. Rava, Esq.
Counsel for Books Sports, Inc.
Perkins Coie LLP
1201 Third Avenue 49th Floor
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By 

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