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

Proceeding	92060185
Party	Defendant Christopher Robert Cline
Correspondence Address	MICHAEL L LEETZOW MICHAEL L LEETZOW PA 2393 CREST RIDGE COURT SANFORD, FL 32771 UNITED STATES michael@leetzow.com
Submission	Answer
Filer's Name	Michael L. Leetzow
Filer's e-mail	michael@leetzow.com
Signature	/Michael L. Leetzow/
Date	03/23/2015
Attachments	AnswerAmended.pdf(336874 bytes)

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

Hot Topic Merchandising, Inc. Petitioner, vs. Christopher Robert Cline Defendant.	Cancellation No. 92060185 Mark: MAYBE PARTYING WILL HELP Reg. No. 4,447,800

ANSWER TO FIRST AMENDED PETITION AND AFFIRMATIVE DEFENSES

Defendant Christopher Robert Cline ("Defendant"), through his attorney Michael L. Leetzow, P.A., answers the Petition for Cancellation filed by Hot Topic Merchandising, Inc. ("Petitioner") as follows:

1. Defendant lacks knowledge and information sufficient to form an opinion as to the allegations contained in Paragraph 1 of the Petition for Cancellation, and therefore denies the same.

2. Defendant admits that Defendant owns the registration at issue, otherwise denies the remaining allegations.

3. Defendant need not respond to the statements in Paragraph 3; to the extent that an answer is required, Defendant admits that it has knowledge of the use by Petitioner and a printout of webpage is attached as Exhibit 1.

4. Defendant admits sending an email to Petitioner on September 25, 2104, alleging

infringement and that a copy of the email as forwarded to LuLu Williams is attached as Exhibit 2.

5. Defendant admits that an email was sent by Defendant on October 1, 2014, in response to an inquiry from Jennifer Vides, Director, Brand and Communications for Petitioner.

6. Defendant admits the application was filed on April 30, 2013 and claimed use since March 1, 2011 for the goods listed therein and matured into the '800 Registration.

7. Defendant denies the allegations contained in Paragraph 7 of the Petition for Cancellation regarding use of the Mark as a Trademark. Defendant admits that in addition to using the Mark on apparel, he has also used it on the front of apparel. Defendant denies that Exhibit 4 is a true and correct copy of Defendant's Facebook page, but is only a small portion showing only one shirt.

8. Defendant admits the allegations contained in the first sentence of Paragraph 8 of the Petition for Cancellation, but submits that they are irrelevant to the issues of this case. Defendant has no specific information regarding Exhibits 5a-5d, but admits that the exhibits are attached to the Petition and appear to have been downloaded long after Defendant's application was filed.

9. Defendant denies the allegations contained in Paragraph 9 of the Petition for Cancellation.

10. Defendant admits the allegations contained in Paragraph 10 of the Petition for Cancellation.

11. Defendant admits to signing the application as alleged in Paragraph 11 of the Petition for Cancellation. Defendant denies the remaining allegations in Paragraph 11 and states

that at least one use of the Mark is illustrated as being used as a trademark in the files for the '800 Registration at the USPTO.

12. Defendant denies fraudulent statements were made as alleged in Paragraph 12 of the Petition for Cancellation; the remainder of the allegations in Paragraph 12 of the Petition for Cancellation do not require a response by Defendant. In the event that a response is required, Defendant denies that the registration would not have been granted.

13. Defendant asserts that the allegations in Paragraph 13 of the Petition for Cancellation are irrelevant to the issues in the Petition for Cancellation and are included only to cast Defendant in a bad light with the Board. Defendant admits to the filing of application 85/542,868; that Exhibit 6 is a copy of the specimen filed with the application; and the application is abandoned. Defendant otherwise denies the allegations in Paragraph 13 of the Petition for Cancellation.

14. Defendant asserts that the allegations in Paragraph 14 of the Petition for Cancellation are irrelevant to the issues in the Petition for Cancellation and are also included only to cast Defendant in a bad light with the Board. Defendant admits filing application 85/920,778 in class 25; also using the phrase "HOUSE MUSIC LOVES ME, BITCH" as ornamentation in addition to correct use as a trademark. Defendant denies the remaining allegations in Paragraph 14 of the Petition for Cancellation.

15. Defendant admits having apparel with slogans and words used on them and that Exhibit is a screenshot of Defendant's Facebook page. Defendant denies the remaining allegations in Paragraph 15 of the Petition for Cancellation.

16. Defendant denies the allegations contained in Paragraph 16 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

17. Petitioner does not have standing to file the current Petition for Cancellation as Petitioner has failed to allege any use of the Mark "MAYBE PARTYING WILL HELP" as an indicator of source but instead admits to only using the phrase "decoratively on articles of clothing."

18. Use of Defendant's Mark MAYBE PARTYING WILL HELP as a mark is clearly illustrated in the records of the U.S. Patent and Trademark Office files. Specifically, the use of the mark on the back of the shirt, near the collar in smaller letters clearly creates the impression of a trademark use, rather than the single use illustrated by the Petitioner.

19. Defendant has used the mark in commerce before the Petitioner's use of Defendant's Mark MAYBE PARTYING WILL HELP.

20. Petitioner has failed to adequately plead damage by the Registration.

21. Defendant has insufficient information upon which to form a belief as to whether it may have additional unstated Affirmative Defenses. Defendant reserves the right to assert additional Affirmative Defenses in the event discovery indicates that they are appropriate.

WHEREFORE, Defendant requests that this Petition be denied and that the Registration be sustained.

Respectfully submitted,

Michael L. Leetzow, Esq.

Michael L. Leetzow, P.A.
Attorney for Christopher Robert Cline
2393 Crest Ridge Ct.
Sanford, FL 32771
Date: **March 23, 2014**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served electronically on Shauna M. Wertheim, The Marbury Group, PLLC, 11800 Sunrise Valley Dr. FL 15, Reston, VA, 20191 on March 23, 2015, at swertheim@marburylaw.com and tm-docketing@marburylaw.com and by facsimile at 703-391-2901.

Michael L. Leetzow

Michael L. Leetzow, P.A.
2393 Crest Ridge Ct.
Sanford, FL 32771