

ESTTA Tracking number: **ESTTA647926**

Filing date: **01/02/2015**

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

Proceeding	92060428
Party	Defendant Middlebrook Design LLC DBA Love Traversé City
Correspondence Address	MIDDLEBROOK DESIGN LLC 121 E FRONT ST SUITE 105 TRAVERSE CITY, MI 49684 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Lauren Creighton
Filer's e-mail	lauren@lovetraversecity.com
Signature	/Lauren Creighton/
Date	01/02/2015
Attachments	ANSWER TO PETITION 2.pdf(525399 bytes)

Registration Subject to the filing

Registration No	4268136	Registration date	01/01/2013
Registrant	Quality Bicycle Products, Inc. 6400 West 105th Street Bloomington, MN 55438 UNITED STATES		

Goods/Services Subject to the filing

Class 012. First Use: 2011/10/01 First Use In Commerce: 2011/10/01 All goods and services in the class are requested, namely: Bicycle parts, namely, tires

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

In the Matter of Registration Nos. 4496120 and 4414967

For the marks  and **45NORTH**
Registered on October 8, 2013 and March 11, 2014

QUALITY BICYCLE PRODUCTS, INC., :
Petitioner, :
v. : Cancellation No. 92060428
MIDDLEBROOK DESIGN LLC :
dba LOVE TRAVERSE CITY, :
Registrant. :

ANSWER TO CONSOLIDATED PETITION TO CANCEL

Middlebrook Design LLC, DBA Love Traverse City, (hereinafter "Registrant"), a Limited Liability Company organized under the laws of Michigan, located at and doing business at 121 E Front St Suite 105, Traverse City, MI 49684, is owner of the above identified Registrations, and hereby answers Petitioner's Consolidated Petition to Cancel as follows:

1. Registrant lacks sufficient evidence to admit or deny any of Petitioner's statements.
2. Registrant lacks sufficient knowledge or evidence to either admit or deny Petitioner's statements.
3. Registrant admits Petitioner is the owner of Registration No. 4268136, but lacks sufficient knowledge as to its validity.
4. Admitted.

5. Admitted.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Registrant admits Registration Nos. 4496120 and 4414967 are less than 5 years old, but denies all other statements.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred by laches, estoppel, waiver, unclean hands, and acquiescence.
2. Petitioner's claims are barred because there is no likelihood of confusion.
3. Petitioner cannot be injured by Registrant's use of the mark due to the prior registration and use of the mark by Registrant. Further, Registrant has continuously used its marks thus Registrant has acquired substantial goodwill and recognition in the mark.
4. Registrant reserves its right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

FACTS

1. As a result of Registrant's continuous use of the Marks, it has developed significant goodwill among the consuming public and consumer acceptance of the goods offered by Registrant in conjunction with the Mark. Such goodwill and widespread usage has caused the Marks to acquire distinctiveness with respect to Registrant, and caused the Marks to become a valuable asset of Registrant.

2. There is no likelihood of confusion. If the examining attorney would have concluded that Registrant's marks (Registration Nos. 4496120 and 4414967) and Petitioner's mark (Registration No.4268136) to be confusingly similar, then the examining attorney would have denied registration of Registrant's marks. Further, Registrant's goods are not similar, in fact they are particularly different.
3. Upon information and belief, Petitioner is a distributor, and their goods are marketed and sold directly to specialty bicycle dealers, and promoted in winter biking related magazines, at winter biking events, and winter/biking tradeshow, as their goods are specifically intended for winter-weather biking. Registrant's goods are casual apparel and are promoted locally (in Northern Michigan), direct to consumers via local publications.
4. Upon information and belief, Petitioner's customers are sophisticated purchasers and the disparity between price points of Registrant's and Petitioner's goods is so great, that confusion is unlikely.
5. Upon information and belief, Petitioner did not begin selling T-Shirts until after registrant.
6. Registrant is not aware of any actual confusion or damage.

COUNTERCLAIM

7. Trademark Act Section 1(a), 15 U.S.C. § 1051(a), allows registration of trademarks "used in commerce" and requires that an applicant make a verified statement that the mark is in use in commerce before the filing of the application. Section 45 of the Act, 15 U.S.C. §1127, defines "use in commerce" of a mark in connection with services "when it is used or displayed in the sale or advertising of services and the services are rendered in

commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

8. Upon information and belief, Petitioner had not used the "45NRTH" mark in commerce on or in connection with any of the services identified in Application No. 86232342, 86232330, and 85625684 and resulting Registration No. 4268136, as of the May 15, 2012 filing date of the application, and on the October 1, 2011 alleged date of first use, anywhere and date of first use in commerce, as required under Trademark Act Sections 1 (a) and 45, 15 U.S.C. §§ 1051(a) and 1127.
9. Accordingly, Application No. 86232342, 86232330, 85625684, and resulting Registration No. 4268136 are void ab initio, and the registration should be cancelled.

RESERVATION OF COUNTERCLAIMS

Registrant reserves the right to amend this Answer pursuant to Federal Rule of Civil Procedure 15 (a) and/or 15 (b), to assert counterclaims if grounds for counterclaims are learned during the course of the proceeding.

WHEREFORE, Registrant prays that Petitioner's Consolidated Petition to Cancel be barred and that Registration Nos. 4496120 and 4414967 remain in full force and effect.

Dated: 1/2/2015

Respectfully Submitted:

By: /Lauren Creighton/
Lauren Creighton

MIDDLEBROOK DESIGN LLC
DBA LOVE TRAVERSE CITY
121 E Front St
Suite 105
Traverse City, MI 49684
Phone: 919-986-0795
lauren@lovetraversecity.com

Owner, Middlebrook Design, LLC

Certificate of Service

I hereby certify that a true and complete copy of the foregoing, Answer to Consolidated Petition to Cancel, has been served on Kristine Boylan, by mailing said copy on 1/2/2015, via First Class Mail, postage prepaid to Briggs and Morgan PA, 2200 IDS Center 80 south 8th street, Minneapolis, MN 55402 United States.

By: /Lauren Creighton/
Lauren Creighton

MIDDLEBROOK DESIGN LLC
DBA LOVE TRAVERSE CITY
121 E Front St
Suite 105
Traverse City, MI 49684
Phone: 919-986-0795
lauren@lovetraversecity.com

Owner, Middlebrook Design, LLC

