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

Proceeding	92060599
Party	Defendant Thomas Clark
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Turn-Key Vacation Rentals, Inc. Petitioner, v. Thomas Clark Registrant.	Cancellation No. 92060599 Mark(s): TURNKEY Reg. No. 4340236 Reg. Date: May 21, 2013
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**REGISTRANT'S ANSWER TO PETITIONER'S
FIRST AMENDED PETITION FOR CANCELLATION**

Registrant Thomas Clark (hereinafter "Registrant" or "Clark") through his undersigned attorney(s), submits his Answer and Affirmative Defenses to the First Amended Petition for Cancellation ("Cancellation" or "Petition") filed by Turn-Key Vacation Rentals, Inc., (hereinafter "Petitioner") dated December 24, 2014 as follows:

In response to the grounds for cancellation enumerated in Petitioner's Electronic System for Trademark Trials and Appeals ("ESTTA") First Amended Petition for Cancellation, Registrant denies that there are any grounds to sustain the Cancellation and denies that Petitioner owns any trademark(s) sufficient to constitute a basis for this opposition.

In response to the second unnumbered introductory paragraph, Registrant denies that Petitioner will be damaged by the continued registration of U.S. Registration No. 4340236.

1. In response to paragraph 1, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies each and every allegation in paragraph 1 of the Cancellation.

2. In response to paragraph 2, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 and, therefore, denies each and every allegation in paragraph 2 of the Cancellation.
3. In response to paragraph 3, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies each and every allegation in paragraph 3 of the Cancellation.
4. In response to paragraph 4, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies each and every allegation in paragraph 4 of the Cancellation.
5. In response to paragraph 5, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies each and every allegation in paragraph 5 of the Cancellation.
6. In responses to paragraph 6, Registrant denies each and every allegation contained in paragraph 6 of the Cancellation.
7. In response to paragraph 7, Registrant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies each and every allegation in paragraph 7 of the Cancellation.
8. In response to paragraph 8, Registrant admits the allegations in paragraph 8 of the Cancellation.
9. In response to paragraph 9, Registrant admits that he is an individual. Except as expressly admitted, Registrant denies each and every remaining allegation in paragraph 9 of the Cancellation.

10. In response to paragraph 10, Registrant denies that he is a resident of California. Except as expressly admitted, Registrant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegation(s) in paragraph 10 and, therefore, denies each and every remaining allegation in paragraph 10 of the Cancellation.
11. In response to paragraph 11, Registrant admits the allegations in paragraph 11 of the Cancellation.
12. In response to paragraph 12, Registrant admits the allegations in paragraph 12 of the Cancellation.
13. In responses to paragraph 13, Registrant denies each and every allegation contained in paragraph 13 of the Cancellation.
14. In response to paragraph 14, Registrant admits the allegations in paragraph 14 of the Cancellation.
15. In response to paragraph 15, Registrant admits that an email chain between Registrant and Petitioner on September 5, 2012 reflect the allegations in paragraph 15 of the Cancellation.
16. In response to paragraph 16, Registrant admits that the records of the TSDR of the USPTO reflect the allegations in paragraph 16 of the Cancellation.
17. In response to paragraph 17, Registrant admits that the records of the TSDR of the USPTO reflect the allegations in paragraph 17 of the Cancellation.
18. In responses to paragraph 18, Registrant denies each and every allegation contained in paragraph 18 of the Cancellation. claimed any rights in the TURNKEY Mark, either at common law or otherwise.

19. In responses to paragraph 19, Registrant denies each and every allegation contained in paragraph 19 of the Cancellation.
20. In responses to paragraph 20, Registrant denies each and every allegation contained in paragraph 20 of the Cancellation.
21. In responses to paragraph 21, Registrant admits that Petitioner has brought this action alleging priority and likelihood of confusion, and fraud. Except as expressly admitted, Registrant denies each and every remaining allegation in paragraph 21 of the Cancellation.
22. In responses to paragraph 22, Registrant denies each and every allegation contained in paragraph 22 of the Cancellation.
23. In responses to paragraph 23, Applicant admits that TURNKEY is the only element in his Mark and therefore the dominant element. Except as expressly admitted, Registrant denies each and every remaining allegation in paragraph 23 of the Cancellation.
24. In responses to paragraph 24, Applicant admits that TURNKEY is the only element in his Mark and therefore the dominant element. Except as expressly admitted, Registrant denies each and every remaining allegation in paragraph 23 of the Cancellation.
25. In response to paragraph 25, Registrant admits that the records of the TSDR of the USPTO reflect that Registrant offers “Real estate services, namely, rental of vacation homes and lodging; real estate management services for vacation rental real estate, namely, arranging services for guest check in, cleaning services and maintenance services,” in International Class 036; and that Petitioner offers “Providing interactive

website that facilitates the management of vacation rental real estate maintenance, cleaning and repair services, namely, scheduling local service providers for cleaning and repairs of vacation rental real estate and providing information related thereto,” in International Class 036. Except as expressly admitted, Registrant denies each and every remaining allegation in paragraph 25 of the Cancellation.

26. In response to paragraph 26, Registrant admits the allegations in paragraph 26 of the Cancellation.

31. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 24 as paragraph 31. In responses to the erroneously numbered paragraph 31, Registrant denies each and every allegation contained in the erroneously numbered paragraph 31 of the Cancellation.

32. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 25 as paragraph 32. In responses to the erroneously numbered paragraph 32, Registrant denies each and every allegation contained in the erroneously numbered paragraph 32 of the Cancellation.

33. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 26 as paragraph 33. In responses to the erroneously numbered paragraph 33, Registrant denies each and every allegation contained in erroneously numbered paragraph 31 of the Cancellation.

34. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 27 as paragraph 34. In responses to the erroneously numbered paragraph 34, Registrant denies each and every allegation contained in erroneously numbered paragraph 34 of the Cancellation.

35. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 28 as paragraph 35. In responses to the erroneously numbered paragraph 35, Registrant denies each and every allegation contained in erroneously numbered paragraph 35 of the Cancellation.
36. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 29 as paragraph 36. In responses to the erroneously numbered paragraph 36, Registrant denies each and every allegation contained in erroneously numbered paragraph 36 of the Cancellation.
37. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 30 as paragraph 37. In responses to the erroneously numbered paragraph 37, Registrant denies each and every allegation contained in the erroneously numbered paragraph 37 of the Cancellation.
38. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 31 as paragraph 38. In responses to the erroneously numbered paragraph 38, Registrant admits the allegations contained in the erroneously numbered paragraph 38 of the Cancellation.
39. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 32 as paragraph 39. In responses to the erroneously numbered paragraph 39, Registrant denies each and every allegation contained in the erroneously numbered paragraph 39 of the Cancellation.
40. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 33 as paragraph 40. In responses to the erroneously numbered

paragraph 40, Registrant denies each and every allegation contained in the erroneously numbered paragraph 40 of the Cancellation.

41. Registrant respectfully informs the Board that Petitioner has erroneously numbered paragraph 33 as paragraph 41. In responses to the erroneously numbered paragraph 41, Registrant denies each and every allegation contained in the erroneously numbered paragraph 41 of the Cancellation.

42. In responses to paragraph 38, Registrant denies each and every allegation contained in paragraph 38 of the Cancellation.

AFFIRMATIVE DEFENSES

By way of further answer, Registrant alleges and asserts the following defenses in response to the allegations contained in the Cancellation. In this regard, Registrant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Registrant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Petitioner's claims that are not apparent on the face of the Cancellation.

FIRST AFFIRMATIVE DEFENSE FAILURE TO STATE A CLAIM

43. Petitioner's claims are barred because the Cancellation fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE NO INJURY OR DAMAGE

44. Petitioner's claims are barred, in whole or in part, because Petitioner has not and will not suffer any injury or damage from the continued registration of U.S. Registration No. 4,340,236 for the Mark TURNKEY.

THIRD AFFIRMATIVE DEFENSE
LACK OF PRIORITY

45. Petitioner admittedly does not own superior common law rights or any registered Mark(s) that would be confused with Registrant's Mark in terms of sight, sound, meaning and commercial impression.

FOURTH AFFIRMATIVE DEFENSE
LACK OF STANDING

46. Petitioner's claims are barred, in whole or in part, because Petitioner does not have standing in that Petitioner does not have rights, superior or otherwise, sufficient to support this Cancellation.

47. Specifically, and as admitted by Petitioner, Petitioner has been using the Mark in interstate commerce since October 1, 2014, at least 22 months after Registrant's first use in Interstate commerce. Furthermore, Petitioner has based its claims entirely on the registration of a domain name, and the filing of its corporate entity. Simply owning a domain name and having registered a corporate entity do not amount to actual nor analogous trademark use.

FIFTH AFFIRMATIVE DEFENSE
LACHES

48. Petitioner's claims are barred, in whole or in part, by the doctrine of laches.

49. Specifically, Petitioner admittedly was aware of Registrant since at least as early as September 5, 2012, and Petitioner did not inform Registrant, until the filing of this

Cancellation, that it claimed alleged prior or superior rights in the TURNKEY Mark in connection with real property rental and related services.

SIXTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

50. Petitioner's claims are barred, in whole or in part, by the doctrine of Acquiescence.

51. Specifically, Petitioner admittedly was aware of Registrant and Registrant's use or intended use of his TURNKEY Mark since at least as early as September 5, 2012, and Petitioner did not inform Registrant until the filing of this Cancellation that it claimed prior or superior rights in the TURNKEY Mark in connection with real property rental and related services, or that it was protesting his use of the TURNKEY Mark.

SEVENTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

52. Petitioner's claims are barred, in whole or in part, because Petitioner cannot establish prior exclusive rights in the United States sufficient to bar Registrant's continued registration of his TURNKEY Mark

53. Specifically, Petitioner admits that at the time Petitioner filed for the TURNKEY mark, Petitioner only had a domain name for the term turnkey and a corporate designation filed with the Secretary of State in California.

EIGHTH AFFIRMATIVE DEFENSE
Waiver

54. Petitioner's claims are barred, in whole or in part, by the doctrine of Waiver.

55. Specifically, Petitioner admittedly was aware of Registrant and Registrant's use or intended use of his TURNKEY Mark since at least as early as September 5, 2012, and Petitioner never attempted to enforce its alleged trademarks rights against Registrant.

NINTH AFFIRMATIVE DEFENSE
ESTOPPEL

56. Petitioner's claims are barred, in whole or in part, by the doctrine of Estoppel.

57. Specifically, Petitioner never informed Registrant that Petitioner claimed alleged rights in the TURNKEY Mark when Registrant attempted to purchase Petitioner's domain name in September of 2012.

TENTH AFFIRMATIVE DEFENSE
UNCLEAN HANDS – HARASSMENT AND EXTORTION

58. Petitioner's claims are barred, in whole or in part, by the doctrine of unclean hands, in that Petitioner filed this Cancellation for the sole purpose to harass and extort Registrant.

ELEVENTH AFFIRMATIVE DEFENSE
NO BASIS

59. Petitioner has no basis either in law, fact or equity, to cancel Registrant's registration for the TURNKEY Mark.

TWELFTH AFFIRMATIVE DEFENSE
FAILURE TO POLICE

60. Petitioner has failed to adequately maintain, police, or enforce trademark or proprietary rights it may have in its alleged trademark. Specifically, Petitioner admittedly was aware of Registrant and Registrant's use or intended use of his TURNKEY Mark since at least as early as September 5, 2012, and Petitioner neither informed nor enforced its alleged rights against Registrant until the filing of this Cancellation.

THIRTEENTH AFFIRMATIVE DEFENSE
STRICT PROOF

61. Registrant calls for strict proof of all of the allegations against Registrant.

FOURTEENTH AFFIRMATIVE DEFENSE

NARROW RIGHTS

62. Petitioner’s claims are barred, in whole or in part, because the adoption and use of the terms “TURN” and “KEY” or phonetic or foreign equivalents are widespread in connection with identical and/or substantially related goods or services to those offered by Petitioner. This widespread adoption requires that Petitioner’s claimed Mark be construed narrowly such that Petitioner’s claimed Mark cannot—as a matter of law—form the basis of a likelihood of confusion, mistake, or deception claim against Registrant.

SIXTEENTH AFFIRMATIVE DEFENSE

63. Registrant reserves the right to assert any and all other affirmative defenses of which Registrant becomes aware during the pendency of this matter.

WHEREFORE, Registrant requests judgment as follows:

1. That the Cancellation be dismissed with prejudice in favor of Registrant;
2. That Registrant be granted further reasonable and appropriate relief.

Dated: August 18, 2015

Respectfully submitted,

HP Legal Group



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Thomas Clark

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of REGISTRANT'S ANSWER TO PETITIONER'S FIRST AMENDED PETITION FOR CANCELLATION is being served by mailing a copy thereof, postage prepaid, by United States Postal Service addressed to the following individual(s), identified in the FIRST AMENDED Petition for Cancellation as the attorney(s) of record and correspondent(s) on this 10th day of August 18, 2015:

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