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

Proceeding	92060777
Party	Defendant PF, LLC DBA RevenueShares Investor Services
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Submission	Answer
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Date	03/11/2015
Attachments	pfans03.115_20150311144330.pdf(360655 bytes)

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

VTL ASSOCIATES, LLC]	Cancellation No.: 92060777
]	
Petitioner]	Registration Nos.: 3,976,098; 3,976,099;
]	3,972,075
v.]	
]	Serial Nos.: 77/791,389; 77/792,433
PF, LLC]	77/792,510
]	
Registrant.]	Marks: RevenueShares, RevenueShares
]	Investor Services, RevenueShares ETFs

ANSWER TO CONSOLIDATED PETITION FOR CANCELLATION AND
AFFIRMATIVE DEFENSES

PF, LLC, a Pennsylvania limited liability company (hereinafter “Registrant”), by its undersigned attorneys, as and for its Answer to the Consolidated Petition For Cancellation against Registration No. 3,976,098 for RevenueShares, Registration No. 3,976,099 for RevenueShares Investor Services and Registration No. 3,972,075 for RevenueShares ETFs, states as follows:

1. Admitted.
2. Admitted.
3. Denied.
4. Denied. By way of further answer, it is denied that Advanced Index Methodologies, LLC (“AIM”) had any rights in the Mark, or any of its formatives (the “Revenue Shares Marks”) to license. The document attached to the Petition to Cancel as Exhibit 1 speaks for itself requiring no response herein.

5. Denied. By way of further answer, it is denied that Index Licensing (“IL”) had any rights in the Revenue Shares Marks to license. The document attached to the Petition to Cancel as Exhibit 2 speaks for itself requiring no response herein.

6. Admitted only that Petitioner VTL Associates, LLC (“VTL”) entered into a Marketing Services Agreement with Pacer Financial, Inc. (“Pacer”). The document attached to the Petition to Cancel as Exhibit 3 speaks for itself requiring no response herein. Otherwise, the remaining allegations set forth in Paragraph 6 of the Petition to Cancel are denied.

7. Admitted.

8. Denied. By way of further answer the domain name www.revenuesharetfs.com was registered by “Pacer Financial” as set forth in the WHOIS record. The document attached to the Petition to Cancel as Exhibit 4 speaks for itself requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 8 of the Petition to Cancel are denied.

9. Denied as stated. There is no document attached to the Petition to Cancel identified as Exhibit 5.1 or 5.2. To the extent that the referenced documents exist, they speak for themselves requiring no response herein.

10. Denied.

11. Denied.

12. Denied.

13. Denied. The term “MSA License” is not defined in the Petition to Cancel, nor is reference to such term understood, and therefore no response can be made herein regarding the same and the allegations are denied. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations respecting the termination of the VTL Sublicense set forth in Paragraph 13 of the Petition to Cancel, and the same are therefore denied. By way

of further answer, while the Petitioner improperly and unlawfully attempted to terminate the MSA, it is denied that the MSA was terminated. Ongoing litigation related to, *inter alia*, the alleged termination of the MSA is proceeding before the United States District Court for the Eastern District of Pennsylvania in the matter *Pacer Financial Inc. v. VTL Associates, LLC, et al.*, Civil Action No. 2:13-CV-05920-JCJ .

14. Denied. AIM had no rights in the RevenueShares Marks to assign. Otherwise, the document attached to the Petition to Cancel as Exhibit 4 speaks for itself requiring no response herein. By way of further response, Exhibit 4 appears to be a Network Solutions Whois record, not any sort of “Intellectual Property Assignment” as alleged by Petitioner in Paragraph 14 of the Petition to Cancel.

15. Denied. IL had no rights in the RevenueShares Marks to assign. Otherwise, the document attached to the Petition to Cancel as Exhibit 5 speaks for itself requiring no response herein. By way of further response, Exhibit 5 appears to be screenshots from a webpage, not any sort of “Intellectual Property Assignment” as alleged by Petitioner in Paragraph 15 of the Petition to Cancel.

16. Denied. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Petition to Cancel, and the same are therefore denied. By way of further answer, it is denied that the MSA was terminated.

17. Denied.

18. Admitted in part, denied in part. It is admitted only that Registrant filed applications for registration of “RevenueShares,” RevenueShares Investor Services,” and “RevenueShares ETFs.” The suggestion that leave of any party would have been required to file these

applications is denied. It is also denied that AIM, IL and VTL did not have notice. The remaining allegations in Paragraph 18 of the Petition to Cancel are denied.

19. Registrant's application documents, including the document attached to the Petition to Cancel as Exhibit 5, speak for themselves requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 19 of the Petition to Cancel are denied.

20. Admitted only that the fictitious name "RevenueShares Investor Services" was displayed on the Pacer Website. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 of the Petition to Cancel, and the same are therefore denied.

21. Denied.

22. Registrant's application documents, including the document attached to the Petition to Cancel as Exhibit 6, speak for themselves requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 22 of the Petition to Cancel are denied.

23. Denied.

24. Registrant's application documents, including the document attached to the Petition to Cancel as Exhibit 7, speak for themselves requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 24 of the Petition to Cancel are denied.

25. Denied.

26. Registrant's application documents speak for themselves requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 26 of the Petition to Cancel are denied.

27. Registrant's application documents speak for themselves requiring no response herein. Otherwise, the remaining allegations set for in Paragraph 27 of the Petition to Cancel are denied.

28. Denied.

29. Denied.
30. Denied. By way of further answer, Registrant (PF) made extensive use of the RevenueShares Marks.
31. Denied.
32. Denied.
33. Denied.

AFFIRMATIVE DEFENSES

In further answer to the Petition to Cancel, Registrant states that:

FIRST AFFIRMATIVE DEFENSE

Petitioner's Petition for Cancellation fails to state a claim upon which relief can be granted, and in particular fails to state legally sufficient grounds for sustaining the opposition.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion between Registrant's marks for the services set forth in its Registrations and Petitioner's alleged mark(s) for its alleged goods or services.

THIRD AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of laches. Petitioner has known of Registrant's applications (and resulting registrations and claim to ownership in the marks at issue) for many years. Registrant, and/or its related company, invested millions of dollars and substantial effort in marketing and developing goodwill in the marks while Petitioner remained silent. Registrant relied on Petitioner's silence.

FOURTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of acquiescence. Petitioner has known of Registrant's applications (and resulting registrations and claim to ownership in the marks at issue) for many years. Registrant, and/or its related company, invested millions of dollars and substantial effort in developing goodwill in the marks while Petitioner affirmatively encouraged said investment. Registrant relied on Petitioner's encouragement.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of estoppel. *Inter alia*, Petitioner encouraged Registrant, and/or its related company, to invest heavily and develop goodwill in the marks at issue, with full knowledge that Registrant, and/or its related company, claimed ownership of the marks and registered the marks, and with the bad faith intent to eventually unlawfully interfere with Registrant's ability to market products under the marks.

SIXTH AFFIRMATIVE DEFENSE

Registrant and/or its related company established rights and ownership in the marks at issue through its use in commerce prior to Petitioner or any other party.

SEVENTH AFFIRMATIVE DEFENSE

Registrant, nor any of its related companies, assigned or transferred its rights in any of the marks at issue to Petitioner or any other party.

EIGHTH AFFIRMATIVE DEFENSE

Any agreement between Pacer and Petitioner was entered into prior to the existence of any of the marks at issue. Any such agreement did not assign rights in marks that did not exist.

NINTH AFFIRMATIVE DEFENSE

No agreement exists constituting a valid assignment of rights in the marks at issue to Petitioner.

TENTH AFFIRMATIVE DEFENSE

Any agreement to assign the marks at issue by Pacer or any of its related companies (if any) was excused by Petitioner's material breaches of its agreements entered into with Pacer.

ELEVENTH AFFIRMATIVE DEFENSE

If Registrant or any of its related companies was a licensee with respect to any of the marks at issue, it was an exclusive licensee, and accordingly it was within its right to file applications to federally register, and register, the marks.

TWELFTH AFFIRMATIVE DEFENSE

The marks at issue are merely descriptive and have not acquired distinctiveness *vis a vis* Petitioner.

THIRTEENTH AFFIRMATIVE DEFENSE

Any rights in the marks at issue not owned by Registrant have been abandoned as a result of licensing said marks without quality control.

FOURTEENTH AFFIRMATIVE DEFENSE

Any rights in the marks at issue not owned by Registrant have been abandoned as a result assignments in gross by Petitioner, AIM and/or IL.

FIFTEENTH AFFIRMATIVE DEFENSE

Registrant has at all times acted in good faith and has made no intentional misstatement to the United States Patent and Trademark Office or any other party regarding the marks at issue.

SIXTEENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of unclean hands. Petitioner acted egregiously and in bad faith by unlawfully inducing Registrant, and/or its related company, to invest millions of dollars establishing the marks at issue based on the understanding and agreement that Pacer would serve as the exclusive marketing agent for products sold under the marks at issue. However, Petitioner never intended to honor its end of the bargain and in fact executed on its plan to cut Pacer out of their business deal after the brand was built.

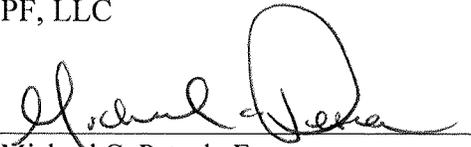
WHEREFORE, Registrant respectfully requests that the Consolidated Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,

PF, LLC

Dated: 3/11/15

By:

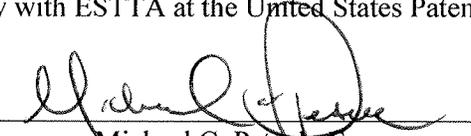


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Certificate of Electronic Transmission

It is hereby certified that a true copy of the foregoing Answer to Consolidated Petition for Cancellation and Affirmative Defenses was filed electronically with ESTTA at the United States Patent and Trademark Office on the date shown below

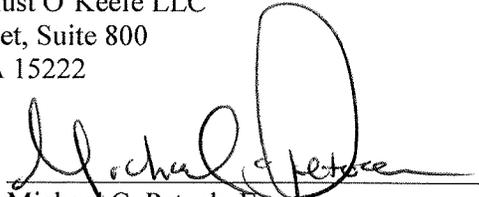
Date: 3/11/15


Michael C. Petock, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Consolidated Petition to Cancel and Affirmative Defenses has been served on the following counsel for Petitioner VTL Associates, LLC by mailing said copy on March 11, 2015, via First Class Mail, postage prepaid to:

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