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

Proceeding	92061257
Party	Defendant Heartland Energy Group, Ltd.
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Date	06/03/2015
Attachments	Answer and Affirmative Defenses (060315).pdf(14721 bytes)

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

FLUID ENERGY GROUP, LTD.,

Petitioner,

v.

**Cancellation No. 92061257
Registration No. 4224628**

HEARTLAND ENERGY GROUP, LTD.

Registrant.

_____ /

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Registrant, HEARTLAND ENERGY GROUP, LTD., by and through its undersigned attorneys and pursuant to 27 CFR §2.114 serves the instant Answer and Affirmative Defenses to Petitioner's Petition for Cancellation of Trademark Registration No. 4224628 for ENVIRO-SYN and states:

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Admitted.
6. Denied.
7. Denied.
8. Denied. (Registrant also notes that there is no "Exhibit B" to the Petition.)
9. Denied.
10. Admitted.

11. Admitted.
12. Admitted that the '631 Application was initially filed for such goods.
13. Admitted.
14. Admitted.
15. Admitted.
16. Without knowledge, therefore denied.
13. (SIC) Denied.
14. (SIC) Denied.

AFFIRMATIVE DEFENSES

1. Petitioner has failed to state a claim upon which relief can be granted. Petitioner has admittedly not used the ENVIRO-SYN mark in the United States, and, due to Petitioner's former contractual obligations with Registrant, Petitioner is aware that Petitioner does not have the right to sell "ENVIRO-SYN" within the United States.

2. Registrant was the first to use the ENVIRO-SYN mark in commerce, a fact which Petitioner is well-aware of in light of Petitioner's other bad faith litigation versus Registrant in both the United States and Canada.

3. Any right Petitioner had to use the ENVIRO-SYN mark on Petitioner's products was merely a limited and non-exclusive license granted by Registrant and which expired upon the termination of various contracts Registrant had with Petitioner.

4. Petitioner has unclean hands. The Canadian registration relied upon for the 44(e) basis of the '631 Application (TMA846795) was filed on February 20, 2012, well after Registrant's application was filed, and the Canadian registration lists December 1, 2011 as the

date the mark was first used in Canada. Ironically, this is one day before Registrant's first use date of December 2, 2011, as listed in the '628 Registration. (Registrant will be amending its first use date to show even earlier use of the ENVIRO-SYN mark which predates the very existence of Petitioner.)

5. Petitioner lacks standing to seek cancellation of the Registration. Petitioner is aware of Registrant's rights in the ENVIRO-SYN mark and knows that Petitioner is not permitted to sell ENVIRO-SYN within the United States.

6. Petitioner has committed fraud upon the USPTO not only in filing the '631 and '639 Applications, but also in bringing this Cancellation proceeding.

DATED this 3rd day of June, 2015.

Respectfully Submitted,

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Attorneys for Registrant

By: /s/ Kevin W. Wimberly _____
Amber N. Davis
Florida Bar No.: 0026628
Kevin W. Wimberly
Florida Bar No.: 0057977

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed via

U.S. Mail and Electronic mail this 3rd day of June, 2015 to: Benjamin Natter, Esquire,
NATTER & NATTER, 501 Fifth Avenue, Suite 808, New York, New York 10017.

/s/ Kevin W. Wimberly
Attorney