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

Proceeding	92061571
Party	Defendant Ivo N Njabe
Correspondence Address	IVO N NJABE 3255 JUSTINA TERRACE, APT #7 JACKSONVILLE, FL 32277 UNITED STATES njabe2002@yahoo.ca
Submission	Other Motions/Papers
Filer's Name	Ivo N. Njabe
Filer's e-mail	njabe2002@yahoo.ca
Signature	/Ivo Njabe/
Date	04/03/2016
Attachments	REGISTRANT's Response to Petitioner's Answer to Board's Order.pdf(354308 bytes )

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

GESTION DIANE LANCTÔT LTÉE,

Petitioner,

v.

IVO N. NJABE,

Respondent.

In the matter of Trademark  
Registration No. 4,299,998

For the mark NIVO (Stylized)  
Registered on March 12, 2013

Cancellation No. **92061571**

**REGISTRANT'S ANSWER TO PETITIONER'S RESPONSE TO THE BOARD'S MARCH 29, 2016 ORDER**

Ivo N. Njabe (hereinafter, "Registrant") files its paper in response to Petitioner's filing dated March 31, 2016, which was styled "PETITIONER'S RESPONSE TO THE BOARD'S MARCH 29, 2016 ORDER" See Docket Entry No. 15.

As an initial matter, Registrant wishes to inform the Board that this filing has not been served on Registrant. Registrant also informs the Board that the response filed by Petitioner is inaccurate for the following;

1. Registrant notes that during a teleconference held between parties on March 18, 2016, Petitioner indicated that its decision to withdraw implies an acknowledgement that Registrant is the rightful owner of the Nivo trademark and that Petitioner is no longer challenging those rights. Petitioner also indicated that no further action was required of Registrant.
2. Petitioner claims in its response to the Board's Order dated March 29, 2016, that the only response made by Registrant to its filing of the withdrawal "was an e-mail thanking

Petitioner for making him aware of the filing of the withdrawal.” Registrant informs the Board that its response also included a question asking Petitioner if the filing meant that Petitioner will stop using the Nivo tradename as no agreement has been reached by parties. **Exhibit B**. Registrant has not received a response to this question.

3. In recognition that a decision to withdraw is within Petitioner’s rights, Registrant acknowledged Petitioner’s rights to stop challenging Registrant’s Mark. Registrant’s emails presented by Petitioner in Exhibit A of its paper in response to the Board’s March 29, 2016 Order is an acknowledgement of those rights and not its consent to withdraw without prejudice. See **Exhibit A** below.
4. As noted in Exhibit B of Petitioner’s response to the Board’s Order dated March 29, 2016, and in **Exhibit A** below, Registrant requested that Petitioner confirm that its decision to withdraw its petition to cancel is also an acknowledgement that it would cease using the Nivo trademark as no agreement has been reached by parties. No response was received by Registrant.
5. As noted in the email in **Exhibit B** below, Registrant indicated it had not received a response to its email dated March 29, 2016, and that while it recognizes that a decision to withdraw is within Petitioner’s rights, Registrant has not consented to a withdrawal without prejudice.
6. In accordance with Trademark Rule 2.114(c), after the answer is filed, the petition may not be withdrawn without prejudice except with the written consent of the registrant or the registrant's attorney or other authorized representative.

Therefore, while Registrant acknowledges Petitioner’s decision to withdraw, given that the decision is within Petitioner’s rights, Registrant has NOT consented to a withdrawal without prejudice and urges the Board to make its decision on this basis.

Respectfully submitted this on April 3, 2016,

/s/ Ivo N. Njabe

Ivo. N. Njabe

Owner of NIVO

3255 Justina Terrace Apt. 7

Jacksonville, FL. 32277

Tel: (904) 553-5618

Email: [njabe2002@yahoo.ca](mailto:njabe2002@yahoo.ca)

### CERTIFICATE OF SERVICE

I here certify that a true and complete copy of the foregoing **REGISTRANT'S ANSWER TO PETITIONER'S RESPONSE TO THE BOARD'S MARCH 29, 2016 ORDER** has been served on:

GESTION DIANE LANCTÔT LTÉE

By emailing and mailing said copy on April 3, 2016, as follows:

F. Michael Sajovec

Peter D. Siddoway

Myers Bigel Sibley & Sajovec, P.A.

4140 Parklake Ave, Suite 600

Raliegh NC 27612

[psiddoway@myersbigel.com](mailto:psiddoway@myersbigel.com)

Attorneys for Petitioner

Signature: /s/ Ivo N. Njabe.

Date: 4/3/2016.

# **EXHIBIT A**

**From:** njabe ivo [mailto:njabe2002@yahoo.ca]  
**Sent:** Friday, March 18, 2016 8:32 PM  
**To:** Siddoway, Peter <psiddoway@myersbigel.com>  
**Subject:** Re: Trademark Cancellation No. 92061571

Mr. Siddoway,

Thank you for taking some time today for a phone call.

In reference to Trademark Cancellation No. 92061571, I am summarizing our phone conversation today, 3/18/2016, just for the record. Based on our conversation, your client will not be proceeding with, but has decided to withdraw the case with the United States Patent and Trademark Office. As such, no action is required from me, including responding to any pending requests from your client and its counsel.

Unless you disagree with any of the above, your reply to this correspondence is not necessary. Thank you and have a good evening.

Regards,

Ivo

**From:** Siddoway, Peter  
**Sent:** Monday, March 21, 2016 12:34 AM  
**To:** njabe ivo  
**Subject:** RE: Trademark Cancellation No. 92061571

Ivo,

I confirm our conversation that took place on Friday. I informed you that my client wished to terminate the proceeding, and you consented to its withdrawal. As such I will be filing the termination papers tomorrow (Monday), and no additional action is required from you, including responding to any outstanding discovery. We will reflect your consent in our papers, and you should receive notification of its filing and – at some later point – the Board's disposition.

Sincerely,

Peter

# **EXHIBIT B**

April 3, 2016

● **njabe ivo** <njabe2002@yahoo.ca>  
To: Siddoway, Peter

Today at 9:10 AM

Mr. Siddoway,

I have noted you have not responded to my email, dated March 29, 2016, in which I requested that you confirm that your client's decision to withdraw its petition to cancel my Mark with the USPTO (Cancellation No 92061571) is an acknowledgement that it would cease using the Nivo trademark as this would be illegal moving forward given that we have not reached any form of agreement.

While your client's decision to withdraw is within its rights and you brought that to my attention, please note, for the record, that I have NOT consented to a withdrawal without prejudice.

Ivo

**From:** njabe ivo [njabe2002@yahoo.ca]  
**Sent:** Tuesday, March 29, 2016 8:53 PM  
**To:** Siddoway, Peter  
**Subject:** Re: Cancellation No. 92061571

Mr Siddoway,

Thanks for bringing this to my attention. Please advise if this is an indication that your client has stopped using the NIVO brand name, or what its plans are moving forward.

Regards,

Ivo

On Thursday, March 24, 2016 2:25 AM, "Siddoway, Peter" <[psiddoway@myersbigel.com](mailto:psiddoway@myersbigel.com)> wrote: