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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
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Submission	Answer
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Date	06/25/2015
Attachments	Response to Petition to Cancel.pdf(141558 bytes )

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

Cancellation No. 92061571

GESTION DIANE LANCTÔT LTÉE

Vs.

IVO N. NJABE

**Response to Petition to Cancel the NIVO trademark registration number 4299998**

I, Ivo N. Njabe, believe that the claims outlined in the above referenced petition by GESTION DIANE LANCTÔT LTÉE (hereinafter "Petitioner") to cancel the registration of my trademark, NIVO, (hereinafter "Mark") shown in U.S. Registration No. 4299998 (hereinafter "Registration"), registered on March 12, 2013, are false. I thereby deny these claims as detailed below.

1. As mentioned by the Petitioner in the above referenced petition, I am the owner of the Registration in International Class 25, and I reside at 3255 Justina Terrace, Apartment 7, Jacksonville, Florida 32277. I, however, deny Petitioner's claim to cancel Registration of my Mark as noted in (2), (3), (5), (6) and (7) below.
2. I deny that my Mark was first used on September 2, 2011. While this was the approximate date of first transaction after I moved to the United States, we conducted business in the United States in May, 2006; May, 2008 and May, 2010, under the NIVO brand name, when the Mark was operating as a Cameroon business. I hereby give notice that, in accordance with U.S. code title 28 section 1732, I will rely on copies of receipts of my business transactions on May, 2006; May, 2008; and May, 2010; and, if

needed, my customer's testimony, in accordance with Trademark Rule 2.123 (a), as evidence for the purpose of this proceeding and during my testimony period.

3. Petitioner claims to be the owner of United States Trademark Registration No. 3517206, in International Class 9, 18 and 25, filed on March 7, 2007, and listing a date of first use in commerce of November 1, 2006. I deny the petition to cancel my registration on this basis for the following reasons;

a) The Word Mark of the referenced registration is N VO, which is different from my NIVO trademark. The logos are also significantly different. Based on information and knowledge, I believe Petitioner is relying on growing appeal and goodwill of my Mark to copy my brand name. I hereby give notice that, in accordance with Trademark Rule 2.122 (d), I will rely on said registration as evidence to deny Petitioner's claim for the purpose of this proceeding and during my testimony period.

b) Like the Petitioner, whom I believe operates as a Canadian business in the United States, I have operated as a Cameroonian business prior to moving to the United States, and my first business transaction in the United States predates Petitioner's claim of first use of the Mark as noted in (2) above. As part of our growth strategy, my Mark is a United States registered business today. The legal name of my business is NIVO, LLC and the registration number is L14000177028. I hereby give notice that, in accordance with U.S. code title 28 section 1732, I will rely on copies of receipts of my business transactions on May, 2006; May, 2008; and May, 2010; and, if needed, my customer's testimony, in accordance with Trademark Rule 2.123 (a), as evidence for the purpose of this proceeding and during my testimony period.

c) If U.S. Registration No. 3517206 existed prior to my registration, then I believe the Registration of my Mark was approved because Petitioner's registration existed under the N VO brand name and not NIVO, and/or was abandoned. I hereby give notice that, in accordance with Trademark Rule 2.122 (d), I will rely on said

registration as evidence to deny Petitioner's claim for the purpose of this proceeding and during my testimony period.

4. Petitioner also claims first use of the NIVO trademark of May 27, 2008, as set forth in Trademark Application 86/364301, filed by Petitioner on August 12, 2014, which is different than the date of first use claimed in (3) above. I deny the petition to cancel my trademark Registration on this basis given the reasons in (3. b) above and (5) below.
5. Petitioner's use of the Mark, as cited in my opposition to the said application in (4) above, will cause confusion in the marketplace. I had filed a letter of protest to the USPTO opposing Petitioner's registration on grounds that its use of my Mark would likely cause confusion, mistake, or deception as to the source of origin of Petitioner's products. After a thorough and careful review of Petitioner's application, it was refused under Trademark Act Section 2 (d), 15 U.S.C. §1052 (d). I hereby give notice that I will rely on said refusal as evidence to deny Petitioner's claim for the purpose of this proceeding, and a copy of the notice thereof will be introduced into evidence during my testimony period.
6. Petitioner has no right to continue using the NIVO trademark as it is not the legal owner of the Mark. I am the rightful owner of the NIVO trademark and those rights are protected by the United States Patent and Trademark Office. Petitioner's continues use of my Mark is a direct violation of my rights. Therefore, I deny Petitioner's claim on this basis. I hereby give notice that, in accordance with Trademark Rule 2.122 (d), I will rely on my Registration (number 4299998) as evidence to deny Petitioner's claim for the purpose of this proceeding and during my testimony period.
7. Petitioner claims that I have abandoned use of my Mark in that I have discontinued use with intent not to resume use. I deny Petitioner's claim as this is not true. NIVO is a registered business in the United States and my company's legal name is NIVO, LLC, registration No L14000177028. My Mark is active in the market place and there are no

plans to abandon use of my trademark. I hereby give notice that, in accordance with U.S. code title 28 section 1732, I will rely on copies of some of my products and my active website as evidence for the purpose of this proceeding and during my testimony period.

Based on belief, Petitioner is using its financial power to cease my Mark and bully me out of the marketplace. While I do not have Petitioner's financial might to higher an army of attorneys and accountants, I am fortunate to be doing business in a country where the rule of law protects even the weak; where the legal system allows people to build dreams for themselves and provide for their families while operating within their limited means.

I believe that I will be damaged by the cancelation of this Registration, and I pray that this Petition for Cancelation of my Mark be rejected, that the USPTO continue protecting me and other vulnerable businesses, that judgement be entered against Petitioner and that my continuous Registration be upheld.

Dated: May 23, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ivo Njabe', written over a horizontal line.

Ivo. N. Njabe

Owner of NIVO

3255 Justina Terrace Apt. 7

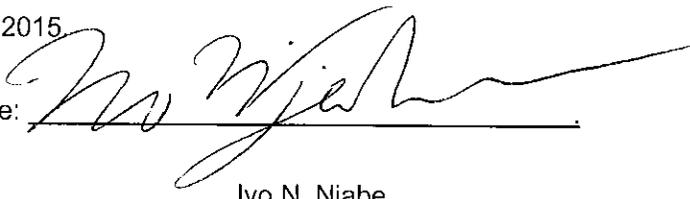
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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted through the Office electronic filing system, in accordance with §1.6(a) (4), to the Office of U.S. Patent and Trademark Office on May 25, 2015.

Signature: 

Ivo N. Njabe

**CERTIFICATE OF SERVICE**

I here certify that a true and complete copy of the foregoing **Response to Petition to Cancel** has been served on:

GESTION DIANE LANCTÔT LTÉE

By mailing said copy on May 25, 2015, via First Class Mail, postage prepaid to:

F. Michael Sajovec

Peter D. Siddoway

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Raliegh NC 27612

Attorneys for Petitioner

Signature: 

Date: 6/25/2015