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

Proceeding	92061743
Party	Defendant The FRS Company
Correspondence Address	THE FRS COMPANY 951 MARINERS ISLAND BLVD, 3RD FLOOR SUITE 300 SAN MATEO, CA 94404 UNITED STATES efiling@kmob.com
Submission	Answer
Filer's Name	Jonathan A. Hyman
Filer's e-mail	efiling@knobbe.com, Jonathan.Hyman@knobbe.com
Signature	/jhh/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Conopco, Inc., Petitioner, v. The FRS Company, Registrant.	Opposition No.: 92061743 Mark: BE MORE Serial No.: 4,425,792 I hereby certify that this correspondence and all marked attachments are being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at http://estta.uspto.gov/ on: September 14, 2015 Jonathan A. Hyman

THE FRS COMPANY'S ANSWER TO PETITION FOR CANCELLATION

UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1451
Alexandria, VA 22313-1451

The FRS Company ("FRS") hereby answers the Petition for Cancellation filed by Conopco, Inc. against U.S. Trademark Registration No. 4,425,792 for the mark BE MORE.

1. FRS admits that the USPTO records show that U.S. Trademark Application Serial No. 86/054,503 for the mark LIPTON BE MORE TEA covers "tea; tea extracts; tea-flavored beverages in the nature of beverages with a tea base; ready-to-drink beverages consisting primarily of tea; iced tea; tea mixes in the nature of powders used in the preparation of tea based beverages and iced tea mix powders; non-medicinal herbal tea and tea for infusions," in Class 30 and is owned by Conopco, Inc. but FRS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Petition for Cancellation and on that basis denies them.

2. FRS admits that the USPTO records show that U.S. Trademark Application Serial No. 86/054,555 for the mark

BE MORE TEA covers "tea; tea extracts; tea-flavored beverages in the nature of beverages with a tea base; ready-to-drink beverages consisting primarily of tea; iced tea; tea mixes in the nature of powders used in the preparation of tea based beverages and iced tea mix powders; non-medicinal herbal tea and tea for infusions," in Class 30 and is owned by Conopco, Inc. but FRS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Petition for Cancellation and on that basis denies them.

3. FRS admits that the USPTO records show that U.S. Trademark Application Serial No. 86/054,561 for the mark BE MORE TEA covers "tea; tea extracts; tea-flavored beverages in the nature of beverages with a tea base; ready-to-drink beverages consisting primarily of tea; iced tea; tea mixes in the nature of powders used in the preparation of tea based beverages and iced tea mix powders; non-medicinal herbal tea and tea for infusions," in Class 30 and is owned by Conopco, Inc. but FRS lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 3 of the Petition for Cancellation and on that basis denies them.

4. FRS admits that the USPTO records show that FRS is the owner of U.S. Trademark Registration No. 4,425,792 which is for the mark BE MORE and covers "Nutritional supplements; nutritionally fortified beverages; powdered nutritional supplement drink mix and concentrate; nutritionally fortified soft chews," in Class 5 and "Non-alcoholic beverages, namely, energy drinks, fruit-flavored beverages, and sports drinks; concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages," in Class 32 but FRS lacks sufficient

information to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Petition for Cancellation and on that basis denies them.

5. FRS admits the allegations contained in Paragraph 5 of the Petition for Cancellation.

6. Paragraph 6 of the Petition for Cancellation is an attempt to summarize the law of abandonment and therefore, FRS can neither admit nor deny this allegation. Furthermore, FRS denies that it has abandoned the BE MORE mark and on that basis denies the allegations in Paragraph 6 of the Petition for Cancellation.

7. FRS denies the allegations contained in Paragraph 7 of the Petition for Cancellation.

8. FRS denies the allegations contained in Paragraph 8 of the Petition for Cancellation. To the contrary, FRS has had ongoing use of the BE MORE mark and this use is evident on the FRS website. The allegation reflects a lack of reasonable investigation by Petitioner prior to initiating the cancellation, in choosing to adopt the mark, and in commencing widespread use of the mark without obtaining authorization from FRS, in violation of FRS's trademark rights.

9. FRS denies the allegations contained in Paragraph 9 of the Petition for Cancellation.

10. FRS denies that the continued existence of U.S. Trademark Registration No. 4,425,792 is damaging to Petitioner or that it is impairing Petitioner's right to register Petitioner's marks. FRS has priority of use and has not abandoned its mark. As such, it is Petitioner's marks that are damaging FRS's U.S. Trademark Registration No. 4,425,792 as noted in the Office Actions issued against Petitioner's marks.

AFFIRMATIVE DEFENSES

FRS alleges the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The Petition for Cancellation fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Petition for Cancellation and causes of action are barred due to the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

The Petition for Cancellation and causes of action are barred due to the doctrine of bad faith.

FRS reserves its right to assert additional Affirmative Defenses as this case progresses.

WHEREFORE, FRS prays that the cancellation be dismissed in its entirety and that U.S. Trademark Registration No. 4,425,792 remain valid and enforceable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 14, 2015

By: _____

John B. Sganga
Jonathan A. Hyman
2040 Main Street, 14th Floor
Irvine, CA 92614
(310) 551-3450
Attorneys for Registrant, The FRS Company

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **THE FRS COMPANY'S ANSWER TO PETITION FOR CANCELLATION** upon Opposers via U.S. Mail on September 14, 2015, addressed as follows:

Lindsey Utrata, Esq.
BAKER & MCKENZIE LLP
452 Fifth Avenue
New York, NY 10018

Jonathan A. Hyman

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