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Filing date: **10/14/2015**

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

|                           |  |
|---------------------------|--|
| Proceeding                | 92061965   |
| Party                     | Defendant<br>Vodkila LLC   |
| Correspondence<br>Address | VODKILA LLC<br>218-11 138TH AVENUE<br>SPRINGFIELD GARDENS, NY 11413<br>UNITED STATES<br>zmk@jacobsburleigh.com |
| Submission                | Answer   |
| Filer's Name              | Zeynel Karcioglu   |
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| Signature                 | /zmk/  |
| Date                      | 10/14/2015   |
| Attachments               | Answer to Cancellation Petition VODKILA.pdf(144272 bytes )   |

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

In the matter of Registration No. 4,425,918 in International Class 33  
Mark: VODKILA

|                |   |                            |
|----------------|---|----------------------------|
| CHANDER ARORA, | ) |                            |
|                | ) | Cancellation No. 92061965  |
| Petitioner,    | ) |                            |
|                | ) | Registration No. 4,425,918 |
| v.             | ) |                            |
|                | ) |                            |
| VODKILA LLC,   | ) |                            |
|                | ) |                            |
| Respondent.    | ) |                            |

**ANSWER TO PETITION FOR CANCELLATION**

Respondent/Registrant, Vodkila LLC (hereinafter "Respondent/Registrant"), a limited liability company located at 218-11 138<sup>th</sup> Avenue, Springfield Gardens, NY 11413, through its undersigned counsel, hereby answers the Petitioner, Chander Arora's (hereinafter "Petitioner") petition for cancellation of United States Trademark Registration No. 4,425,918 for VODKILA as follows:

1. Admitted.
2. Respondent/Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2, and therefore denies and demands proof of same.
3. Respondent/Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3, and therefore denies and demands proof of same. Notwithstanding the foregoing, the USPTO record speaks for

itself and indicates that Petitioner has had knowledge of the Respondent/Registrant's application (which has since become the registration at issue) for years – since at least as early as December 2, 2011.

4. Respondent/Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4, and therefore denies the same.

5. Admit that Respondent/Registrant filed Application Serial No. 85/236,565, which application speaks for itself.

6. Admit that a statement of use was filed by Respondent/Registrant and that the application speaks for itself.

7. Admit that Respondent/Registrant is the owner of Registration Number 4,425,918, which registration speaks for itself.

8. Admit that Respondent/Registrant is the owner of Registration Number 4,425,918, which speaks for itself.

9. Respondent/Registrant avers that it is the owner of Registration Number 4,425,918, and all rights conferred by and in connection with such registration, which speaks for itself, and further denies Petitioner's assertion that VODKILA is not distinctive (inherently or otherwise) or that it has secondary meaning with respect to Respondent/Registrant's goods and services.

**FIRST GROUND FOR CANCELLATION  
(Descriptiveness)**

10. Respondent/Registrant responds to the allegations in Paragraph 10 as such responses correspond to its responses to Paragraphs 1-9 of the Petition.

11. Respondent/Registrant denies the allegations in Paragraph 11.

12. Respondent/Registrant denies the allegations in Paragraph 12.

13. Respondent/Registrant lacks information sufficient to admit or deny the allegations in Paragraph 13 and therefore denies and demands proof of same.

14. Respondent/Registrant denies the allegations set forth in Paragraph 14, except that it admits that its products are alcoholic and contain alcohols and flavorings; Respondent/Registrant does produce products that include tequila and vodka.

15. Respondent/Registrant denies the allegations in Paragraph 15.

16. Respondent/Registrant denies the allegations in Paragraph 16.

17. Respondent/Registrant denies the allegations in Paragraph 17.

**“ALTERNATE” GROUNDS FOR CANCELLATION  
(Descriptive misdescriptiveness)**

18. Respondent/Registrant responds to the allegations in Paragraph 18 as such responses correspond to its responses to Paragraphs 1-9 of the Petition.

19. Respondent/Registrant denies the allegations in Paragraph 19.

20. Respondent/Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20, and therefore denies the same.

21. Respondent/Registrant denies the allegations in Paragraph 21.

22. Respondent/Registrant denies the allegations in Paragraph 22.

**AFFIRMATIVE DEFENSES**

1. Petitioner has been aware of Respondent’s/Registrant’s application and registration for several *years*, in fact, at least at least as early as December 2, 2011 when the Respondent/Registrant’s then-application was cited against Petitioner’s application. The Respondent/Registrant’s mark was later published for opposition – without objection by Petitioner, who waited several years after having knowledge of the Application and Registration before bringing this proceeding claiming to have been harmed by the

Respondent/Registrant's registration. For this reason and others to be expanded upon during the course of this proceeding, Petitioner's claims are barred by the doctrines of laches and waiver.

2. Petitioner has argued strenuously to the USPTO that the marks at issue in this proceeding are in fact *not* confusingly similar, and that consumers in the marketplace are likely to be able to distinguish between the two marks. He now takes a position wholly inconsistent with his prior arguments, both with respect to a likelihood of confusion and with respect to descriptiveness, and for that reason and for others to be expanded upon during the course of this proceeding, Petitioner's claims are barred by the doctrine of estoppel.

3. Respondent's use of the VODKILA mark is not merely descriptive.

4. Respondent's use of the VODKILA mark is not deceptively misdescriptive.

5. Respondent's trademark VODKILA is distinctive, and the term VODKILA denotes to the public that Registrant is the sole source of goods and services offered under the mark.

6. Having full knowledge of Respondent/Registrant's exclusive rights in the VODKILA mark, Petitioner has, upon information and belief, sought in bad faith to coopt the Respondent/Registrant's goodwill and recognition in the marketplace for Petitioner's own benefit and in order to create confusion in the marketplace. Petitioner has, among other bad acts, imitated Respondent/Registrant's brand name, copied Respondent/Registrant's marketing tag lines (such as Respondent/Registrant's slogan "Take your Best Shot" which was copied by Petitioner, who used the imitation #TakeYourBestShot in connection with its beverage promotion), and has sought imitate various elements of Respondent/Registrant's look and feel in order to inject confusion in the marketplace. For this reason and others to

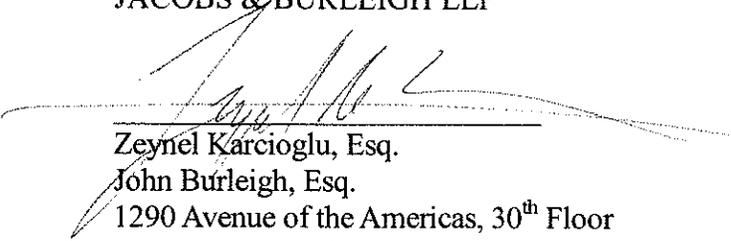
be expanded upon during the course of this proceeding, Petitioner's claims are barred by the doctrine of unclean hands.

**WHEREFORE**, Respondent/Registrant requests that the Board dismiss the instant Petition and strike the Petition for Cancellation, with the Petitioner taking nothing.

Dated: New York, New York  
October 14, 2015

Respectfully submitted,

JACOBS & BURLEIGH LLP



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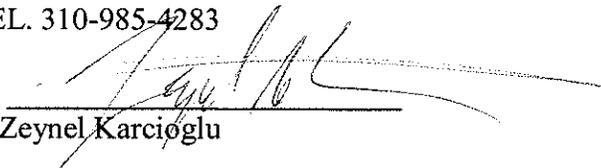
*Attorneys for Respondent/Registrant*

**Certificate of Service**

I hereby certify that this 14<sup>th</sup> day of October 2015, the foregoing Answer to Petition for Cancellation is being filed electronically with the United States Trademark Trial and Appeal Board.

I hereby further certify that the foregoing Answer have been served via First Class Mail to Petitioner Chander Arora's attorney of record at the following address:

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