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

Proceeding	92061981
Party	Defendant Yoel Steinberg
Correspondence Address	YOEL STEINBERG DBA CUPK KOSHER SUPERVISION 1823 53RD STREET BROOKLYN, NY 11204 UNITED STATES yoelhalevi@juno.com
Submission	Answer and Counterclaim
Filer's Name	Yoel Steinberg
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Signature	/ys/
Date	05/09/2016
Attachments	part 1 of 2 the Answers and Defenses got printed so use.pdf(416519 bytes ) COUNTERCLAIMS part 2 of 2 use wo second caption bsd.pdf(286804 bytes ) OWN WEBSITE K AND CHOF GENERIC.pdf(107713 bytes ) screenshot Mark registered servicemark Apr 14 2002 .pdf(74055 bytes ) certServAnsCountclaim.pdf(23380 bytes )

### Registration Subject to the filing

Registration No	927067	Registration date	01/11/1972
Registrant	KOSHER SUPERVISION SERVICE, INC. 201 THE PLAZA TEANECK, NJ 07666 UNITED STATES		

### Goods/Services Subject to the filing

Class A. First Use: 1971/04/01 First Use In Commerce: 1971/04/01 All goods and services in the class are requested, namely: FOOD
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### Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute	Trademark Act Sections 14(3) and 2(a)
Deceptiveness	Trademark Act Sections 14(3) and 2(a)
The mark comprises matter that, as a whole, is functional	Trademark Act Sections 14 and 2(e)(5), or Section 23 if on Supplemental Register
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act Section 14(3)

Fraud on the USPTO

Trademark Act Section 14(3); In re Bose Corp.,  
580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir.  
2009)

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

Kosher Supervision Service, Inc.

Petitioner

v.

Yoel Steinberg

*(pro se`)* Respondent

Cancellation No. 92061981

RESPONDENT'S ANSWER TO  
PETITION FOR CANCELLATION  
And COUNTERCLAIM

And in the matter of Trademark Registration No.

927067

For the Mark

K [and design]

Registration Date

JAN 11 1972

Yoel Steinberg (individual)

*(pro se`)* Counter-Petitioner

v.

Kosher Supervision Service, Inc. (corporation)

Counter-Respondent

Cancellation No.

COUNTER-PETITIONER'S  
PETITION TO CANCEL

**RESPONDENT'S ANSWER AND COUNTERCLAIM TO PETITION FOR CANCELLATION**

I, Respondent, Yoel Steinberg, for the answers to the Petition for Cancellation filed by KOSHER SUPERVISION SERVICES, INC., on record as mailed on Aug 7, 2015, [and as later amended by Board order April 30] against registration of my trademark K [AND DESIGN], Registration No. 3830599, registered on August 10, 2010, (henceforth "my mark") plead and aver [under Board order which precludes certain motions against the allegations] as follows:

1. Answering paragraph 1 of the petition: To the extent that the word “Petitioner” may have been construed to include “Kosher Supervision Services”, I deny the allegations. To the extent that the allegations and petition as a whole might be interpreted to mean “Kosher Supervision Service, Inc.”, has been a corporation all the way back to 1972, or to any date prior to 1986, I deny the allegations. To the extent that the allegations and petition as a whole might be interpreted to mean “Kosher Supervision Service, Inc.”, has been a corporation all the way back to 1986, I do not have sufficient first-hand knowledge of the matter to aver a firm belief, and so I accordingly deny the allegation.
2. Answering paragraph 2 of the petition, I admit the averments that are exactly consistent with the records of the United States Patent and Trademark Office. Petitioner should know however that the letter K is disclaimed within the Registration for my mark.
3. Answering paragraph 3 of the petition, To the extent that the allegations may be interpreted to mean Petitioner asserts that when the petition was filed and serviced, or at any date within the five year period following the registration of my mark, that Petitioner was already the owner of record at USPTO of the pleaded Registration, I accordingly deny the allegations. To the extent that the allegations may be interpreted to mean Petitioner asserts that when the petition was filed and serviced, or at any time within the five year period following the registration of my mark, Petitioner was already the valid or true owner of the mark of the pleaded Registration, I accordingly deny the allegations. To the extent that the allegations may be interpreted to mean that Petitioner asserts it is either the original owner of, or a validly recorded assignee of the registration without any break in the chain of title to the original owner of the mark, I accordingly deny the allegations. To the extent that the allegations and the petition as a whole may be interpreted to mean that Petitioner asserts it owned the mark of the pleaded Application all the way back to 1972, or even to as late as Jan 1986, I accordingly deny the allegations. To the extent that the allegations may be interpreted to mean that Petitioner is arguing toward a conclusion that being the owner of record at USPTO at any date would make it the valid owner of the pleaded registration and application, And since that is not a factual matter which may be admitted or denied, I accordingly deny the allegations. However, To the extent that the allegations include Petitioner’s assertions that at dates later than Nov 12, 2015, Petitioner was the owner of record at USPTO of the pleaded Registration, I accordingly admit only to the extent that the USPTO websites show and

have shown whatever is shown and has been shown on the USPTO websites, but I do not admit Petitioner is or was ever the valid owner of either of the pleaded marks, nor of the pleaded Registration, nor of the pleaded Application.

4. Answering paragraph 4 of the petition, To the extent that the allegations and the petition as a whole, even when interpreted liberally in favor of Petitioner, can be reasonably interpreted to mean that Petitioner asserts the respective design element of the pleaded marks as Registered or Applied are neither a cup, nor a graphic representation of a cup, I accordingly admit this particular fact of the allegations. To the extent that the allegations and the petition as a whole, even when interpreted most favorably for petitioner, can be reasonably interpreted to mean Petitioner asserts that to those among the Hebrew literate population, the respective design element of the pleaded marks have no distinctiveness as designs, nor any other distinctiveness beyond that of a typographical Hebrew letter, I accordingly admit this particular narrowly specified fact of the allegations. To the extent that the allegations and the petition as a whole, even when interpreted most favorably for petitioner, can be reasonably interpreted to mean Petitioner asserts that to those who encounter the mark among non-Hebrew literate population, the respective design element of the pleaded marks have no distinctiveness whatsoever, I accordingly admit this particular narrowly specified fact of the allegations. To the extent that the omission within the allegations and within the petition as a whole, of any mention of stylization would, even when interpreted most favorably for petitioner, would be interpreted to mean Petitioner asserts that the purported Hebrew letters within the pleaded marks are not distinctive stylizations, I accordingly admit this particular narrowly specified fact of the allegations. To the extent that the allegations and the petition as a whole, even when interpreted most favorably for petitioner, would mean Petitioner asserts that the pleaded marks can be dissected into parts they respectively “consist of”, and to the extent this would mean Petitioner asserts the pleaded marks are not unitary, and are without any distinctiveness beyond the elements themselves, I accordingly admit this particular narrowly specified fact of the allegations. To the extent that the allegations imply Petitioner is arguing toward a conclusion about how to dissect the pleaded marks into what they respectively “consist of”, this conclusion is not a factual matter which can be admitted or denied. I therefore do not have sufficient information, And accordingly deny the allegations. Additionally, To the extent that the allegations can be interpreted to mean that Petitioner asserts that within the Hebrew alphabet there is a Hebrew letter whose name spelled in English is KOF, I admit only to the extent that a Hebrew typographical letter ק [typed via ‘e’ key on Windows Hebrew keyboard,] appearing as a vertical line

segment on the lower left, arched over by another segment on the right, is referred to in commerce as KOF (using English letters KOF) as being a member of the Hebrew alphabet, And that authoritative sources in English such as the Dictionary, and Hebrew alphabet charts listed in Encyclopedias do define or otherwise denote KOF (using English letters KOF) as being the name of ק the 19th letter of the Hebrew alphabet. However I deny that any Hebrew letter (as opposed to the name of the letter) is pronounced as KOF (whatever that sound might be). And I deny that any lone Hebrew letter is pronounced as a three letter syllable. Furthermore, To the extent that the allegations are overreaching in their scope, conjectural, and too widely applicable, I accordingly deny the allegations. Petitioner is given fair notice that there is no set correct pronunciation for words not commonly found in English language. -And that pronunciation of Hebrew letters can depend on the word they are used in. To the extent that the allegations may mean that Petitioner asserts there is a set order of how unspecified individuals would go about describing the pleaded marks in an unspecified spoken language, I deny that there is any set correct way to describe the marks –even among consumers who are bilingual in Hebrew and English. However, to the extent that the allegations may be reasonably interpreted to mean Petitioner asserts that among the relevant public there is a set order to describing kosher certification marks, K [and design] in general, and to the extent that this is reasonably taken to mean Petitioner asserts that when a mark K [and design] is referred to in spoken language, mention of K must be preceded by a description of the design element to assist in identifying which or whose K is being spoken of, I accordingly admit only to the narrowly specified extent that the K appearing in the pleaded marks does not serve to indicate which or whose standard is represented by the mark. Additionally, Petitioner is given fair notice that there are set rules as to how the letters of the sacred Hebrew alphabet are formed. To the extent that “referred to in spoken language” is a nebulous phrase, I do not have sufficient information, And accordingly deny the allegation. To the extent that the allegations might be interpreted to mean Petitioner asserts that the rights claimed by the pleaded Registration or Application "consist of" any non-Latin letter element, I accordingly deny the allegation. Petitioner is given fair notice that the pleaded Registration and Application do not claim rights other than "K and design". And that the assignment data of record even within the alternative that such record is valid does not convey rights other than "K [stylized]". And that the Registration, Application, and assignments do not reserve rights to any Hebrew or otherwise non-Latin letter element. Additionally, to the extent that the allegation means Petitioner asserts the respective commercial impression of the pleaded marks is as two

marks of which they respectfully "consists of" -as opposed to the marks being unitary, I accordingly admit this particular narrowly specified implication of the allegation. Additionally, to the extent that the allegation implies Petitioner asserts that K is one of those two marks of which they "consist", I accordingly admit this particular narrowly specified implication of the allegation.

5. Answering paragraph 5 of the petition, I Deny the allegations. Petitioner should know and is given fair notice that to information and belief, the Mark of Registration No. 927067 has not been in commercial use beyond the barest minimum, or even in any use at all, for decades, And that the Mark does not appear in any of the numerous specimens showing at USPTO on-line records. Petitioner should also know that there are also affirmative indications, which include the specimen submissions on record as part of the TSDR prosecution histories at USPTO, that (as opposed to an intermediate mark or marks that seems to have also been abandoned for the mark of Application No. 86713509), the mark of Application No. 86713509 itself was not used, in connection with goods sold commercially in United States, prior to the date when I began using my mark, or prior to the date when I Applied to Register my mark. Furthermore, to the extent that the allegations would mean Petitioner asserts it has been using in commerce a mark consisting of K and a Hebrew letter KOF, and based on information and belief that even Petitioner does not believe it ever used a mark consisting of ק , I accordingly deny that Petitioner ever used in commerce a mark consisting of K and Hebrew letter KOF. Furthermore, to the extent that the allegations may mean Petitioner asserts that since 1971 the mark of the pleaded registration was used on each and every individual category of "food" without exception as to any specific category of food, I accordingly deny the allegations. Furthermore, to the extent that the allegations may mean Petitioner asserts that since 1972 the mark of the pleaded Application was used on each and every individual category of goods mentioned within the Application, I accordingly deny the allegations. To the extent that the allegations may mean Petitioner asserts that its mark has ever been in commercial use on or in connection with "chemical preparations for veterinary purposes" as certifying goods in that category as meeting the requirements of Kosher dietary law for which the pleaded Application seeks to register the Mark, I accordingly deny the allegations. To the extent that the allegations may mean Petitioner asserts that it is even possible for a kosher certification mark to be in commercial use on or in connection with "chemical preparations for veterinary purposes" as certifying goods in that category as meeting the requirements of Kosher dietary law for which the pleaded Application seeks to register the Mark, I accordingly

deny the allegations. To the extent that the allegations may mean Petitioner asserts that the Mark of the pleaded Application has been in use on goods within the category of “for the separation of greases”, or that “for the separation of greases” is a category of goods at all, I accordingly deny the allegations.

6. Answering paragraph 6 of the petition, to the extent that the allegations repeat what was previously stated in (paragraph 5 of) the petition that the pleaded marks were in use for over 40 years, I repeat here by reference what I pleaded to paragraph 5 of the petition, and accordingly deny the allegation. To the extent that that the allegation indirectly or directly states Petitioner’s assertion that goods were promoted advertised and provided, but the allegation does not sufficiently specify –even in brief- any criteria as to why Petitioner concludes the goods were of high quality, Petitioner’s conclusion is not a fact that may be admitted or denied. I therefore do not have sufficient information, and I accordingly deny the allegation. To the extent that that Petitioner indirectly or directly asserts that goods were promoted advertised and provided but does not sufficiently specify –even in brief- any estimate as to why Petitioner concludes the promotion, advertising, and provision was “extensive”, that conclusion is not a fact which may be admitted or denied. I therefore do not have sufficient information, and I accordingly deny the allegation. To the extent that Petitioner contends as a legal conclusion that goods offered under a certification mark signify the party who certifies the goods, that conclusion is not a fact which may be admitted or denied. I therefore do not have sufficient information, And I accordingly deny the allegation. However, to the extent that the allegations would mean Petitioner asserts that the pleaded marks have come to be used to signify Petitioner, as a result of the marks being used or interpreted as a company logo, or as a result of any other use of “Petitioner’s marks signifying Petitioner” as an entity, So that Petitioner in effect asserts that it permitted the use of the pleaded certification marks for purposes other than to certify, I accordingly ADMIT to this particular narrowly specified fact of the allegation that Petitioner permitted the use of the pleaded certification marks for purposes other than to certify. To the extent that the allegations would mean Petitioner asserts it discriminately refused to certify goods not of high commercial quality even if such goods maintain the standards or conditions of KOSHER compliance which the pleaded mark certifies, so that Petitioner in effect asserts that Petitioner discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies, I accordingly ADMIT for consideration this particular narrowly specified fact that Petitioner discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the

standards or conditions which such mark certifies. To the extent that Petitioner asserts that goods offered under a certification mark signify the standards used to certify the goods, I accordingly deny the allegation. To the extent that Petitioner is arguing toward a conclusion that goods offered under a certification mark signify the standards used to certify the goods, And since a conclusion is not a fact which may be admitted or denied, I therefore do not have sufficient information, And I accordingly deny the allegation. To the extent that the allegations would mean Petitioner is arguing toward a conclusion, that since the pleaded marks were used for 40 years as a certification mark on or in connection with goods which petitioner itself was not the source of, that this would therefore create any commercial awareness at all for the pleaded marks as certification symbols, I accordingly deny the allegations. To the extent that the allegations would mean Petitioner is arguing toward a conclusion, that since the pleaded marks were purportedly used for 40 years as a certification mark on goods which petitioner itself was not the source, that this would therefore create any commercial awareness among public and trade, that there is even such a thing as a kosher certification symbol, I accordingly deny the allegations. To the extent that the allegations would mean Petitioner is arguing toward a conclusion, that since the pleaded marks were used for 40 years as a certification mark on goods which petitioner itself was not the source of, that "public and trade" have even noticed the certification symbol, I accordingly deny the allegations. To the extent that the allegations and the petition as a whole, would mean Petitioner is arguing toward a conclusion, that since the pleaded marks were purportedly used for 40 years as a certification mark on goods, that this would have any pertinent bearing in regard to references in spoken language as Kof K, which is not any of the pleaded marks themselves, I accordingly deny the allegations. To the extent that the allegations and the petition as a whole, would mean Petitioner is arguing toward a conclusion, that years of use of the pleaded marks which followed the date of use for my mark, would have any pertinent bearing or be of relevance to the issue at hand, I accordingly deny the allegations. To the extent that the allegations would mean Petitioner asserts the pleaded marks as placed on all goods the pleaded marks were used on, would be sufficiently noticeable by consumers I accordingly deny the allegations. To the extent that the allegations would mean Petitioner asserts its standards are stringent, I accordingly deny the allegations. To the extent that the allegations would mean Petitioner asserts there is such a thing as a highest standard of kosher law, or of religious law, I accordingly deny the allegations. To the extent that the allegations would mean Petitioner asserts there is even such a thing as a standard of kosher law, or of religious law, with the implication being that kosher

compliance, or religious law compliance, is subject to standards rather than compliance being a binary quality that is or is not present, And since these specifics of Petitioner's assertions are a matter of Religious doctrine rather than a fact which can be denied or admitted, I accordingly deny the allegations. To the extent that the allegations, would mean Petitioner is arguing toward a conclusion that a certification mark being used on high quality goods, would have any pertinent bearing on whether "public and trade" would come to recognize that the mark is exclusively on high quality goods, Or that the mark is not also used on low-quality goods of little if no kosher quality, And since such a conclusion is not a fact which may be denied or admitted, I therefore do not have sufficient information, And accordingly deny the allegations. To the extent that the allegations would mean Petitioner is arguing toward a conclusion, that a certification mark appearing on industrial ingredients and chemicals, would have any pertinent bearing on what kosher consumers who rarely if ever encounter such goods would come to recognize, And since such a conclusion is not a fact which may be denied or admitted, I therefore do not have sufficient information, And accordingly deny the allegations.

7. Answering paragraph 7 of the petition, To the extent that Petitioner asserts that it has "extensive prior rights", I accordingly deny the allegations. To the extent that Petitioner asserts it has any "prior rights", I accordingly deny the allegation. To the extent that Petitioner asserts it has any "rights", I accordingly deny the allegation. To the extent that the allegations might be reasonably interpreted to mean Petitioner is arguing toward a conclusion that a broad classification such "food" within a registration would grant Petitioner any protectable rights, And since that is a not a factual matter which may be admitted or denied, I therefore do not have sufficient information, And I accordingly deny the allegations. To the extent that the allegations might be reasonably interpreted to mean Petitioner is arguing toward a conclusion that a listing of the goods covered by the mark, formulated using the words "kosher food, beverages and food products" within a Application or Registration would grant any protectable rights, And since that is a not a factual matter which may be admitted or denied, I therefore accordingly deny the allegations. To the extent that the allegations might be interpreted to mean Petitioner is arguing toward a conclusion that a goods specification formulated using words, such as "floculants" and the other words listed within the pleaded Application whose meaning is not understandable to the average person, would grant Petitioner protectable rights for those goods, And since that is a not a factual matter which may be admitted or denied, I therefore accordingly deny the allegation. Insofar as Petitioner asserts that I applied for a

trademark, I admit that I applied for a trademark. Insofar as the allegation prefaces an accusatory clause “Notwithstanding...”, And insofar as the allegation may mean that Petitioner asserts my decision to file an application for my trademark’s registration should have been “withstanding” of something else—as if to imply there was anything untoward with my applying for a trademark- I accordingly deny the allegations. Insofar as Petitioner asserts that a registration claiming broad unspecified categories such as “food” would grant rights to anything specific, this is a legal presumption rather than a fact which could be denied or admitted. I therefore do not have sufficient information, And accordingly deny the allegation. To the extent that Petitioner is drawing a conclusion that simply filing an Application would imply prior rights versus my mark which was in first constructive use, And since that is a legal conclusion rather than a fact which can be denied or admitted, I do not have sufficient information and accordingly deny the allegations. Petitioner should know and is given fair notice that I have already filed and serviced a Notice of Opposition to the pleaded Application within TTAB Opposition Proceeding No. 92061981. ESTTA Tracking number: ESTTA688428 Filing date: 08/07/2015, And that such Proceeding is open and pending.

8. Answering paragraph 8 of the petition, To the extent Petitioner asserts that my mark was used at least as far back as July 22, 2009 on or in connection with goods commercially sold, and at least as far back as November 3, 2002, I accordingly admit this particular implication of the allegation. However, I do not admit that my mark was not used even prior to these dates. To the extent that the allegation as formulated, addresses me as a corporation, using the word “its” rather than “his”, I accordingly deny the allegation. To the extent that the allegation would be interpreted to mean a Registration’s owner asserts any information in the Registration rather than a registration being a document issued by United States, and signed by the Examining Attorney, I accordingly deny the allegation.

9. Answering paragraph 9 of the petition, To the extent that the allegations and the petition as a whole are reasonably interpreted to mean Petitioner asserts that its contentions about how my mark “is referred to “in spoken language” do not extend to asserting that my mark is called or pronounced as “Kof K”, I accordingly admit to this particular narrowly specific fact of the allegation that that my mark is not called or pronounced as “Kof K”. To the extent that allegation may be reasonably interpreted to mean that Petitioner’s asserts its contentions within this allegation are not more than “information and belief”, I accordingly admit that Petitioner does not asset with

certainty beyond that of “information and belief”. To the extent Petitioner asserts that my mark –as opposed to the name of the business I conduct, or the supervision service which I provide- is referred to in spoken language as Cup K, I do not have sufficient information, And accordingly, I deny the allegation. Additionally, to the extent that the allegation does not give sufficient phonetic representation of the word CUP K, Paragraph 9 of the petition is an unclear statement. I do not have sufficient information as to what language is asserted to be spoken, and accordingly I deny the allegation. To the extent that the allegation is formulated using a nebulous phrase “is referred to in spoken language as”, I do not have sufficient information, And I accordingly deny the allegation. To the extent that the allegation may be reasonably interpreted to mean Petitioner asserts there is a correct set way to interpret and then articulate a description of a design, I accordingly deny this particular implication of the allegations. Petitioner should know that the design element of my mark, K [and design], is coded by US Patent and Trademark Office as a MUG rather than CUP. To the extent that the allegation may be interpreted to imply Petitioner asserts that my mark can be dissected, or that it perceived one element at a time, rather than as a compound whole, I accordingly deny this particular implication of the allegations. To the extent that the allegation may be interpreted to mean Petitioner asserts that dissecting my mark into separate elements K [and design], and then arbitrarily attributing a sound to each of these elements individually, and then verbalizing these sounds in arbitrary sequence, would be an accurate description which does not rob the mark of its visually simultaneous and unitary nature, I accordingly deny this particular implication of the allegations.

10. Answering paragraph 10 of the petition, I admit that I own United States Registration No. 3883012 for the trademark CUPK, And that the service covered by the registration includes the service of Inspecting food establishments for the purpose of certifying the kosher quality thereof; Inspecting foods for the purpose of certifying the kosher quality thereof . I also admit that mark of United States Registration No. 3883012 was used at least as far back as November 3, 2002, and at least as far back as July 22, 2009 in connection with commercial use. However, I do not admit that the mark was not used prior to those dates.

11. Answering paragraph 11 of the petition, To the extent that the allegation as formulated is a conclusion prefaced by the word “Therefore”, So that Petitioner is arguing based on a presumption that a first use date within a registration means the mark was never used prior to that date, toward a conclusion about whose marks were used first, Rather than Petitioner directly averring a fact which may be denied or admitted, And since a conclusion is not

a fact which may be denied or admitted, I do not have sufficient information, And I accordingly deny the allegation. To the extent that the words “Respondent alleges” within the allegations may be interpreted to mean that Petitioner asserts I made any allegations of my own, even before my having filed a Counterclaim or Opposition, about when my mark was first used, I accordingly deny the allegations. To the extent that in the allegation and in the petition as a whole, Petitioner does not directly specify –even in brief- when the pleaded marks were actually used within the United States, so that Petitioner’s argument toward its conclusion is not valid even as a reasoning, And that since even an invalid conclusion is not an allegation of facts which may be denied or admitted, I therefore do not have sufficient information and accordingly deny the allegations.

### COUNT ONE: LIKELIHOOD OF CONFUSION

12. Answering paragraph 12 of the petition, I repeat each and every answer as set forth in paragraphs 1 through 11 as if stated here.

13. Answering paragraph 13 of the petition, I specifically and generally deny each and every averment contained

within paragraph 13 of the petition. In further specificity, I deny that my mark  is similar in appearance,

sound, and commercial impression to the mark , I deny that my mark  is similar in appearance,

sound, and commercial impression to the mark , I deny that my mark is similar in commercial impression to

either of the marks pleaded by Petitioner. I deny that my mark is similar in appearance to either of the marks pleaded by Petitioner, I deny that my mark is similar in sound to either of the marks pleaded by Petitioner,

Furthermore, I deny that Cup K is similar in sound to Kof K. I deny that how a mark is “referred to in spoken language” is a sound of the mark. I deny that there exist “similarities in sound between Cup K and Kof K”. I deny that my mark is dissected into component parts. I deny that even the component parts of my mark would be similar to the component parts of the pleaded marks –even in regard to the assertive K appearing on the right of my mark

versus the diminutive k appearing on the left of the pleaded marks. And I deny that  is similar to  or

similar to .

14. Answering paragraph 14 of the petition, To the extent that the allegation does not specify –even in brief- any goods in Class A for which the pleaded marks are asserted by Petitioner to be actually used on or in connection with, And that the allegation is limited to Petitioner’s conclusion that these unspecified goods are identical to goods that my mark is used on or in connection with, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. To the extent that the allegations may be interpreted to mean the pleaded marks are or have been in use at all, I have already pleaded a denial to this allegation in paragraph 5, and accordingly repeat here by reference my denials appearing in paragraph 5. To the extent that Petitioner asserts that my mark is used on or in connection with goods in Class A, I admit that the goods my mark is used on or in connection with include goods in Class A. However, I do not admit that my mark is not used to certify additional goods or services. Additionally, Petitioner is given fair notice that even if Petitioner were to specify which goods the allegation refers to, and if even my mark were to be used on those goods, it is very likely that my mark was in prior use in regard to that good, and/or that the pleaded mark(s) was (were) not used, or was no longer used on that good, so that there is no simultaneous overlap. Petitioner should also know that industrial chemicals and ingredients such as those listed in the Application are not consumer goods presumed to be encountered for sale by anyone buying the goods covered by my registration. And that a mark appearing on goods within the course of manufacturing, and not offered for sale to consumers, is not a first use of a mark.

15. Answering paragraph 15 of the petition, To the extent that the allegation does not specify –even in brief- any goods, or, customers or channels which are the subject of this allegation, And that the allegation is limited to Petitioner’s conclusion that these unspecified goods, customer, or channels, are identical to goods, customers and channels which would apply to my mark, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. To the extent that the allegations may be interpreted to mean the pleaded marks are or have been in use at all, I have already pleaded to this allegation in paragraph 5, and accordingly repeat my plea appearing in paragraph 5 to deny the allegations. Additionally, Petitioner is given fair notice that even if Petitioner were to specify which goods, customers, and channels, the allegation refers

to, and if even my mark were to be used on those goods, it is very likely that my mark was in prior use in regard to those goods, customers and channels, and/or that the pleaded mark(s) was (were) not yet or no longer used on that good so that there is no simultaneous overlap. Petitioner should also know that industrial chemicals and ingredients such as those listed in the Application are not consumer goods for which there should be a presumption of overlap in the customers, channels, and promotions, vis a vis the goods covered by my registration. And that a mark appearing on goods within the course of manufacturing, and not offered for sale to consumers, is not a first use of a mark. As to what goods petitioner's mark is actually used, I do not have sufficient first-hand information of the matter to aver a firm belief, and I accordingly deny the allegation. As to what my mark is used on, I admit it is used on whatever the registration says it covers.

16. Answering paragraph 16 of the petition, I specifically and generally deny each and every averment contained within paragraph 16 of the petition. Additionally, to the extent that Petitioner is arguing toward any conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. I repeat here by reference, each and every answer and plea stated in all of the foregoing paragraphs 1 through 15. Additionally, and specifically, I deny that anyone who encounters my mark, would be likely to be confused mistaken or deceived that my mark is any of the pleaded marks, even if that human being had only a vague recollection of the pleaded marks. To the extent the allegations may apply to people who do know Hebrew Alphabet, I deny that anyone who knows Hebrew alphabet would even consider a notion that my mark contains a Hebrew letter called KOF. To the extent that the allegations may apply to people who don't know Hebrew alphabet, I deny that they would have even a vague recollection that the pleaded marks consist of a Hebrew letter named KOF. I deny that confusion between my mark and either of the pleaded marks is likely or even possible. I deny that consumers will give any dominance over the respective design within the marks to the merely descriptive and generic K within the marks. I deny that consumers will perceive my mark as dissected into elements rather than as a simultaneous whole. To the extent that Petitioner argues toward a conclusion with implications that confusion between my mark and the pleaded marks would be likely even when neither of the marks were ever encountered, "due to similarities in sound" "between CupK" "and Kof K", And since a conclusion –even if absurd- is not a fact which may be denied or admitted, I must therefore plead I don't have sufficient information, And I accordingly deny the allegations. To the extent that Petitioner directly or indirectly argues toward a conclusion that the sound of a

commercial impression of a mark is the sound of the mark itself, And since that direct or indirect conclusion is not a fact which may be denied or admitted, I must therefore plea that I don't have sufficient information, And I accordingly deny the allegations. To the extent that Petitioner argues toward a conclusion that additional factors, such as those established as duPont factors, or Polaroid factors, need not be considered in addition to the factors pleaded within the petition, and since a conclusion is not a fact which may be denied or admitted, I therefore do not have sufficient information, and I accordingly deny the allegations.

17. Answering paragraph 17 of the petition, I specifically and generally deny each and every averment contained within paragraph 17 of the petition.. Additionally, to the extent that Petitioner is arguing toward any conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. In further specificity, To the extent that the allegation does not specify –even in brief- that my mark, or even the pleaded marks, were ever encountered, And that the allegation does not specify –even in brief- what was seen or what was even vaguely recalled, And that the allegation does not specify –even in brief- what is alleged to have occurred, But is rather limited to Petitioner's own conclusions that the undisclosed incident was one of "confusion" and that it was "actual" , And that Petitioner further concludes what it was "due to", And since a conclusion is not a fact which may be denied or admitted, I do not have sufficient information, and I accordingly deny the allegations. To the extent that the allegation as formulated prefacing the words "In fact" is couched in terms asserting that Petitioner's conclusion is a fact rather than an unfounded conclusion, I accordingly deny the allegation.

18. Answering paragraph 18 of the petition, I specifically and generally deny each and every averment contained within paragraph 18 of the petition. In further specificity, To the extent that Petitioner is arguing toward a conclusion that it was, is, or will be harmed, or that harm will continue to be caused, And since a conclusion is not a fact which may be denied or admitted, I therefore do not have sufficient information, And I accordingly deny the allegation. Petitioner is given fair notice that the conclusions of the allegation as a whole do not follow logically, and presumes mistaken assumptions and distorted definitions. To the extent that Petitioner asserts that my mark as reflected by the registration shares similarities with the pleaded marks, I already pleaded/answered my denials to that allegation in the foregoing paragraphs, and I repeat the answers and denials stated in all the foregoing paragraphs 1

through 17 as if stated here. To the extent that the allegation as formulated, is not clear whether Petitioner asserts that my mark as reflected by the registration shares similarities with the pleaded marks as reflected by the pleaded registrations, the allegation is an unclear statement, I therefore do not have sufficient information, And I accordingly deny the allegation. To the extent that the allegation as formulated using words “Respondent’s Kosher certifications”, it is not clear whether Petitioner refers to the certification standards specified for my mark, or to the goods certified to my mark’s specifications, the allegation is an unclear statement, I therefore do not have sufficient information, And I accordingly deny the allegation. To the extent that the allegation as formulated using words “Petitioner’s Kosher certifications”, Petitioner does not reveal what are its specification standards, the allegation is an unclear statement. I therefore do not have sufficient information, And I accordingly deny the allegation. To the extent that the allegation as formulated using words “certifications as being provided by ...Petitioner”, it is not clear whether Petitioner refers to the certification standards specified for the pleaded marks, or rather to the supervision services provided by Petitioner, the allegation is an unclear statement. I therefore do not have sufficient information, And I accordingly deny the allegation. Petitioner is given fair notice that the certification standards specified for my mark, and the standards which must be met by goods certified as kosher by my mark, arguably surpass those of the pleaded marks. And that since what is or is not kosher cannot be determined within these proceedings, the allegation is pointless. On the alternative that petitioner is a successor in title to pleaded marks, Petitioner is also given fair notice that I or those to whom I am privy arguably are or were affiliated with Petitioner’s predecessor. Petitioner is also given fair notice that the allegation as formulated does not show how the registration of my mark is the cause of the asserted harm, since the asserted immediate cause of harm as argued by Petitioner may be continued legally and as of right through other means which do not require a registration or even a trademark. Petitioner is also given fair notice that the registration for my mark does not state the word “kosher”.

19. Answering paragraph 19 of the petition, I specifically and generally deny each and every averment contained within paragraph 19 of the petition. Additionally, to the extent that Petitioner is arguing toward any conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. I repeat each and all of the foregoing paragraphs 1 through 18 as if stated here.

20. Answering paragraph 20 of the petition, I specifically and generally deny each and every averment contained within paragraph 20 of the petition. Additionally, to the extent that Petitioner is arguing toward any

conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. I repeat each and all of the foregoing paragraphs 1 through 19 as if stated here.

21. Answering paragraph 21 of the petition, I repeat here the answers given in all foregoing paragraphs 1 through 20.

22. Answering paragraph 22 of the petition, I specifically and generally deny each and every averment contained within paragraph 22 of the petition. Additionally, to the extent that Petitioner is arguing toward any conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. I repeat each and all of the answers stated in foregoing paragraphs 1 through 21 as if stated here. In further specificity, I deny the pleaded marks have any strength. I deny the pleaded marks have any distinctiveness. I deny there is nationwide recognition of the pleaded marks among the general population of consumers within United States. I deny that the pleaded marks are recognized as certification marks or relied upon by even a majority of the narrow population of kosher observant consumers within United States. I deny that a majority of the general population of consumers in United States know or recognize the design element of the pleaded marks. I deny that a majority of the general population of consumers in United States know or recognize what is the letter of the Hebrew alphabet which Petitioner asserts the pleaded marks consist of. I deny that even among the narrow population of Kosher consumers within United States, that consumers would recognize the design element of the pleaded marks to be a Hebrew letter called "KOF". Additionally, to the extent that Petitioner argues toward a conclusion that the years for which the pleaded marks were in use subsequent to the date of my mark being in use would be of any relevance toward petitioner's conclusion that the pleaded marks were famous prior to when my mark was in use, And since a conclusion –even if self contradictory- is not a fact which may be denied or admitted, I therefore do not have sufficient information, And accordingly I deny the allegations. Additionally, to the extent that Petitioner argues toward a conclusion that duration and extent for the pleaded Marks in the "collective" sense, would be of pertinence even if use of the mark on any individual good was not of long duration, And since a conclusion –even if not sufficiently supported- is not a fact which may be denied or admitted, I therefore do not have sufficient information, And accordingly I deny the allegations.

23. Answering paragraph 23 of the petition, I specifically and generally deny each and every averment contained within paragraph 23 of the petition. Additionally, to the extent that Petitioner is arguing toward any

conclusions, And since conclusions are not facts which may be denied or admitted, I do not have sufficient information and accordingly deny the allegations. I repeat each and all of the foregoing paragraphs 1 through 22 as if stated here. Additionally, to the extent that the allegation as formulated is predicated on a contingency “if the Lanham act”, and does not articulate the consequences of such contingency, And since the allegation is not complete as a sentence, the allegation is an unclear statement. I therefore do not have sufficient information, And accordingly I deny the allegations.

### **AFFIRMATIVE DEFENSES , AMPLIFICATION OF DENIALS, and other Defenses**

Without conceding that any of the following must be pleaded as an affirmative defense, or that any of the following is not already in issue by virtue of the foregoing denials, and without prejudice to my right to plead additional defenses as discovery into the facts of the matter may warrant, In further answer to the Petition I hereby aver the following affirmative defenses and other defenses and amplification of denials without undertaking or otherwise shifting any applicable burdens of proof.

24. I repeat and affirm all of the foregoing paragraphs 1 through 23 as if stated and affirmed here.
25. Lack of Jurisdiction: To the extent that Petitioner seeks to bar references in spoken language, specifically how my mark would be “referred to in spoken language as Cup K”, this is beyond jurisdiction of the Board which is limited to whether or not a mark may be registered. Board jurisdiction does not extend to regulating Free Speech. To the extent that Petitioner seeks to bar fair use of English language and of Hebrew language by barring use of letter K and Hebrew letter “kof”, Board jurisdiction does not extend to regulating fair use of Speech.
26. Improper Venue: These proceedings are not the venue to complain against registration of my mark CupK.
27. Additionally, To the extent that Petitioner seeks to complain against violation of Petitioner’s purported rights to any mark spelled KOF K, Petitioner’s complaints are beyond these proceedings.
28. Defective Service of Process: The petition was not serviced in a timely manner prior to the statute of limitations given by 15 U.S.C. § 1064(1) precluding the grounds listed within the petition has set in on August 11, 2015. Specifically, I was never serviced with nor pointed by Petitioner to the record of any assignments upon which Petitioner must rely to establish sufficient links in chain of title. Additionally, I was never serviced with the Amended petition.

29. Defective Process: Petitioner has not presented nor pointed to Assignment records linking it in title to the original owner of the pleaded registration and its mark. Petitioner failed to comply with 37 C.F.R. §3.73(b)(1) which requires the Assignment data to have been presented. Additionally, Petitioner has not sent to the Board an amended petition.
30. Statute of Limitations: Untimeliness: The petition was not amended in a timely manner prior to the statute of limitations given by 15 U.S.C. § 1064(1) precluding the grounds listed within the petition. The petition was not amended prior to Aug 11 2015, which is after the five year anniversary of my mark's registration has passed on August 10 2015. Additionally, the petition did not forewarn about soliciting or having acquired an assignment from the pleaded registration's original owner, so that the matter of the proposed amendment to include the pleaded registration as owned by Petitioner did not relate back to the original petition.
31. No Right to Plead the Registration: The originally filed petition did not forewarn or give fair notice that an assignment would need to be solicited from the original owner of the pleaded registration and its mark, who at the time the petition was filed was fully entitled to refuse granting any assignment to Petitioner, So that at the time the petition was filed Petitioner did not have real interest in the pleaded registration or its Mark.
32. Failure to Join: The petition fails to join the Registration's original owner as a plaintiff. The petition fails to join the true owner of the Mark of the pleaded Application as a plaintiff. Neither of these parties have been joined as a plaintiff in a timely manner prior to the statute of limitations given by 15 U.S.C. § 1064(1) precluding the grounds listed within the petition. These parties were not joined prior to Aug 11 2015, which is after the five year anniversary of my mark's registration has passed on August 10 2015. And have still not joined.

**PETITIONER HAS NO STANDING OR REAL INTEREST TO PETITION AGAINST MY MARK:**

33. On the alternative that Petitioner is the successor in title to the pleaded registration: Petitioner was never assigned rights to plead the registration against my mark on the grounds listed within the petition. Specifically, Pursuant to 15 U.S.C. §1064(1), prior to assigning any rights to Petitioner, the Assignor himself had lost such rights as of August 11, 2015 which is after the five year anniversary of my mark's registration has passed on August 10, 2015.
34. No Ownership of Application No. 86713509 and its pleaded Mark: The related Opposition Proceedings No.

91227481, initiated April 22, 2106 against Petitioner, are filed and pending, And the prescribed fee has been paid.

The pleadings of my Notice of Opposition, and the subsequent amendments are included here by reference.

35. Additionally, To information as gathered based on search results showing on website of Public Government records of Corporations for State of New Jersey, Petitioner Kosher Supervision Service, Inc. did not exist as a corporation prior to 1986.
36. To information as gathered based on search results showing on the website of Public Government records of Corporations for State of New Jersey, Petitioner Kosher Supervision Services Inc. [plural no comma] is not a corporation, And is not a juristic person who may be represented within these proceedings .
37. To information as gathered based on search results showing on the website of Public Government records of Corporations for State of New Jersey, Petitioner Kosher Supervision Service, Inc. and Petitioner Kosher Supervision Services Inc. are not the same entity.
38. Based on immediately foregoing 5 paragraphs 33, 34, 35, 36, and 37, in regard to the mark of the pleaded Application, at the date the petition was filed or subsequently amended, Petitioner was neither the Mark's original owner, nor the Mark's Assignee. Petitioner is not the valid owner of the pleaded Application or its mark, And Petitioner does not have real interest in the Mark.
39. Failure to Join: Alternatively: Even if there may be a true owner of the mark of the pleaded Application, this true owner of the mark was not included as a plaintiff or petitioner at any date prior to August 11, 2015, which is the day after the fifth year anniversary of the registration of my mark. Consequently, pursuant to 15 U.S.C. §1064(1), the true owner of the pleaded Application and its mark, has already lost any rights to sue or petition against my mark based on the grounds stated within the petition.
40. Statute of Limitations: Alternatively: Even if there may have been an assignment for the pleaded registration, the purported assignment conveying rights in the pleaded registration to Petitioner was not executed at any date prior to August 11, 2015, which is the day after the fifth year anniversary of the registration of my mark. Consequently, pursuant to 15 U.S.C. §1064(1), the purported Assignor of the pleaded registration, who is not included as a petitioner, had already lost any rights to sue or petition against my mark based on the grounds stated within the petition. These lost rights could then not be assigned to Petitioner –even if the conveyance may have been nunc pro tunc, So that Petitioner may not plead the pleaded registration against my mark for the grounds stated within the

petition.

#### UNCLEAR STATEMENTS

41. Allegations of the petition are unclear statements for reasons specified as given within their corresponding paragraphs.

#### PETITION AS A WHOLE FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

42. The Petition fails to state a claim upon which relief may be granted: Merely stating “magic words” such as “likelihood of confusion”, “actual confusion”, and “dilution”, without specifying sufficient facts upon which to draw a plausible conclusion is insufficient as a pleading. Specifically as stated previously and as follows:

43. IMMATERIAL ALLEGATIONS: Paragraphs 13,16,17 of the petition, and the Petition as a whole, do not sufficiently assert –even as an unfounded conclusion- that anyone who actually encountered or will encounter my



mark has ever or might ever be confused, mistaken, or deceived into believing it to be what they even

vaguely recall to be either  or . Petitioner’s assertions of actual or a likelihood of Confusion and Dilution “in light of the similarity in sound between Cup K” “and “Kof K”” are not confusion and dilution due to any similarities between my mark and either of the pleaded marks.

44. IMMATERIAL ALLEGATIONS: Petitioner’s contentions that actual confusion, likelihood of confusion, and dilution, could exist “due to similarities in sound” between two marks other than the conflicting marks themselves, is untenable as a novel legal theory, And would apply even to absurd instances when neither my mark nor any of the pleaded marks were ever encountered.

45. IMMATERIAL ALLEGATIONS: Paragraph 17 of the petition and the petition as a whole, do not aver that my mark was ever actually encountered, whether anything was seen spoken or heard, and whether anything about my mark was ever confused to be something it isn’t. Petitioner merely concludes that the undisclosed and unaverred incident was one of “confusion” and that it was “actual”, but specifies no facts upon which a plausible conclusion may be drawn.

46. IMMATERIAL ALLEGATIONS: Confusion or dilution that is “due in part to the similarity in sound between Cup

K and Kof K” asserted by Petitioner within paragraph 17 of the petition is not confusion or dilution between my mark and any of the pleaded marks.

47. IMMATERIAL ALLEGATIONS: What Petitioner terms as “actual confusion” due “in part” to similarities which are not inherent to the conflicting marks themselves is an absurd contention which could likewise exist between two entirely dissimilar marks that share no common characteristic at all. By Petitioner’s reasoning, any competing mark may likewise be asserted to be in conflict with Petitioner’s mark once Petitioner would succeed in convincing enough people to refer to the competing mark “in spoken language as” something similar in sound to Kof K.
48. IMMATERIAL ALLEGATIONS: Paragraph 17 and the petition as a whole, do not sufficiently aver –even as an unfounded conclusion- that any actual confusion took place within the context of commerce, or to any meaningful degree. I affirmatively plea on the logical calculation that confusion is an absurd impossibility, that no confusion took place within the context of commerce or to any meaningful degree.
49. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the Petition as a whole, do not do not sufficiently specify –even in brief- any unique associations held by the public in regard to the pleaded marks which would be diluted by my mark being used or registered. The petition does not even sufficiently assert that my mark would dilute the word “Kof K”. I affirmatively plea that the public does not hold any unique associations in regard to the pleaded marks. And that my mark and even Cup K would not be likely to cause confusion with or dilution of any of the pleaded marks, or even with or of the word Kof K.
50. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the petition as a whole, do not do not sufficiently specify –even in brief- any assertion that Petitioner is the only party whose kosher certification mark consists of K [and design], or even of K and Kof. I affirmatively plea that the Registry is replete with numerous Registered and unregistered kosher certification marks consisting of K [and design], and even of K and designs which may be interpreted to be the Hebrew letter Petitioner calls Kof, so that further likelihood of confusion or dilution as a result of my mark would not be possible.
51. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the petition as a whole, do not do not sufficiently specify –even in brief- any assertion that Petitioner is the only party whose mark consists K and a design which may be interpreted to be Kof, or whose mark consist of K and other designs which may be interpreted to be an object pronounced in a foreign language or “referred to in spoken language as” a word which

sounds similar to CUP or KOF. I affirmatively plea that the Registry is replete with numerous Registered and unregistered third party marks consisting K and design which may be “referred to in spoken language as” Cup K, or Kof K, So that further harm ascribable assertions of confusion or dilution as a result of my mark or its registration would not be possible.

52. Paragraph 23 of the petition, alleging dilution, And the Petition as a whole, do not do not sufficiently specify –even in brief- that the respective elements of the pleaded marks have not already been diluted by third party marks so that my mark poses no further dilution. I affirmatively plea that the respective elements of the pleaded marks have already been diluted by third party marks so that my mark poses no further dilution.

53. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the Petition as a whole, do not do not sufficiently specify –even in brief- any purportedly unique associations held by the public in regard to the K appearing within the pleaded marks. I affirmatively plea that there are no such unique associations.

54. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the Petition as a whole, do not sufficiently specify –even in brief- any purportedly unique associations held by the public in regard to the Hebrew letter which Petitioner asserts appears within the pleaded marks. I affirmatively plea that there are no such unique associations.

55. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, And the Petition as a whole, do not do not sufficiently specify –even in brief- that the relevant population –to whom the pleaded marks would be of commercial awareness, and who would base their purchasing decision on the presence of a kosher certification mark, and who would recognize the design element of the pleaded mark to be a Hebrew letter which petitioner calls “kof”, and who would recognize the K within the pleaded marks, constitute as required by the pleaded statute, to be a majority or even a significant portion of the consuming public . I affirmatively plea that said relevant population is an insignificant minority of the general consuming public. And that even among the relevant public, consumers would know that my mark does not contain any Hebrew letter which Petitioner calls kof.

56. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, does not adequately specify the pleaded statute. The allegation is predicated on a contingency of “if the Lanham Act” and is not a complete sentence. Additionally, the petition therefore fails to give fair notice as to which statute is pleaded.

57. On the alternative that Petitioner is the successor in title to the pleaded registration: Paragraph 18 and the petition

as a whole do not sufficiently assert –even in brief- that I was not associated or affiliated, or even privy to Petitioner’s predecessor in title. I affirmatively plea that I or the main rabbi behind kosher certification issued under my mark, is affiliated or otherwise associated with Rabbi Harvey Senter. Specifically, in that Rabbi Senter is and was a member of the same rabbinical association called Igud Horabonim.

58. IMMATERIAL ALLEGATIONS: Paragraph 23 of the petition, alleging dilution, and paragraph 13 of the petition alleging similarity, both based on assertions of “similarity in sound between Cup K” “and Kof K”, And paragraphs 4 and 9 of the petition, And the Petition as a whole, do not do not sufficiently specify –even in brief- that these references “in spoken language as” “Kof K” or “Cup K” have ever happened at any time prior to the registration of my mark, or that these references in spoken language take place within United states, or that these references in spoken language are done by the relevant population for whom the pleaded marks would be of commercial awareness, and who may be confused by encountering my mark, or who may find their associations with the pleaded marks to be diluted by encountering my mark. Neither do the allegations and the petition as a whole sufficiently aver that the pleaded marks are actually pronounced as “kof k” rather than merely “referred to in spoken language as “kof k” ”, Or that my mark is actually pronounced as Cup K rather than merely “referred to in spoken language as Cup K”. I affirmatively plea to the contrary.

UNCLEAR STATEMENTS: PETITION FAILS TO GIVE FAIR NOTICE

59. The petition fails to Give Fair Notice due to the petition being comprised of unclear statements: Specifically, Paragraphs 4, 12, 13, 17, 18, 19, 20, 21, 22 and 23 of the petition which seek to build a case for similarity in the marks, and a likelihood of confusion or dilution, do not give *fair notice* of what the allegation is. Specifically, Petitioner asserts a factual contention as to what "Petitioner's Marks are referred to in spoken language as ", but does not indicate using words commonly found in English what this spoken language is. The allegations and the petition as a whole do not fairly delineate how the words "Kof" , "Kof K" , and "Cup K" are spoken and pronounced, since it is well settled that there is no set correct pronunciation of words not commonly found in English language. Accordingly these allegations are also unclear statements.

PETITION IS BASED ON UNTENABLE CONTENTIONS AND NONCONCLUSIVE ARGUMENTS

60. IMMATERIAL ALLEGATIONS: Petitioner’s contentions in Paragraphs 6 and 18 of the petition, and the petition as a whole, which are based on a premise that the owner of a certification mark is associated with goods sold under the mark, or that goods “signify” the owner of the certification mark the goods are sold under, are untenable as a legal theory.
61. IMMATERIAL ALLEGATIONS: Paragraph 6 of the petition and the petition as a whole do not specify sufficient facts from which to draw a plausible conclusion that fame or commercial awareness exist for the pleaded marks, despite the petition alleging use of the pleaded marks for 40 years. Even certification marks that were in use for decades would not necessarily accrue good will or recognition without the marks themselves being emphasized rather than the goods the marks appear on. The petition as a whole does not specify –even in brief- sufficient facts which would contribute toward meeting the criteria given by the pleaded statute which would establish fame for a certification mark. Neither do the allegations and the petition as a whole assert sufficient facts from which to draw a plausible conclusion that the marks have accrued any commercial awareness at all.
62. IMMATERIAL ALLEGATIONS: Paragraphs 6 and 18 of the petition which seeks to draw a conclusion based on 40 years of use for the pleaded marks is irrelevant at least to the extent that the last 5 years (minus a few days) of those 40 years are subsequent to the date of my mark’s Registration at USPTO. And that my mark was in commercial use and had much fame of its own even prior to that.
63. IMMATERIAL ALLEGATIONS: Paragraph 6 of the petition which seeks to draw a conclusion based on forty years of use for the pleaded marks is irrelevant at least to the extent that the “spoken language as “Kof K” ” upon which the petition as a whole uses as a basis to assert likelihood of confusion or dilution has itself not been sufficiently asserted –even in brief- to have taken place for forty years.
64. IMMATERIAL ALLEGATIONS: The alleged similarities upon which the entire complaint is based is limited to pleading that Cup K, which is not the mark petitioned, is similar to Kof K, which is not either of the pleaded marks. And even the contention that the pleaded “Marks are referred to in spoken language as “Kof K”” is itself based on petitioner’s own merely subjective and even inaccurate “information and belief” that the respective design elements within the pleaded marks is “a Hebrew letter [called] “kof”.
65. IMMATERIAL ALLEGATIONS: Authoritative references such as dictionaries and encyclopedias note that “kof” is ק the 19<sup>th</sup> letter of the Hebrew alphabet. And that כ or כּ in outline form, which petitioner arbitrarily

asserts to be the interpretation of the design element of the pleaded marks, even if interpreted as Hebrew letter, is not called kof but rather other names.

**EQUITY DEFENSES (Pursuant to 15 U.S.C. §1069, Section 19 of Lanham Act) and additional defenses**

ACQUIESCENCE

66. I affirm the defense of Acquiescence: Specifically, I have been continuously using my mark on commercially sold food since at least as July 2009, and have peacefully co-existed with Petitioner for over 6 years prior to the filing of this petition. Petitioner did not object to my using my mark, nor to my mark's subsequent registration on Aug 10 2010, until filing the originally submitted petition on August 7, 2010 only one business day prior to the fifth year anniversary of the registration of my mark and the date of incontestability for it, and the subsequently amended petition which was deemed by the Trademark Trial and Appeals Board to be amended on March 30 2016.

67. Petitioner has also not filed Application No. 86713509 until a few days prior to the fifth year anniversary of the registration of my mark and the date it would be eligible for incontestability. -And over forty (40) years since the date that Petitioner asserts that pleaded mark has been first used.

68. Furthermore, over six years ago (in early April 2010, just after Passover of that year), I discussed use of my mark with Daniel Senter, Vice President, and corporate representative of Petitioner Kosher Supervision Service, Inc. and son of Rabbi Harvey Senter, corporate representative and CEO of Kosher Supervision Service, Inc., when Daniel called me by phone. Daniel said it was not my mark that bothered his father and himself but rather another complaint which was not about my mark, and which was not addressed toward me but rather to my Honored Father Rabbi Israel M. Steinberg. During the phone conversation, Daniel explicitly acquiesced to my use of my mark, And expressed his opinion that my mark itself is not a conflict with his symbol. The issue of disagreement they had with my father was rather about their contention that my father was calling his organization by a name pronounced as Cup Kay. I expressed to Daniel my disagreement with his opinion on that issue. In reply to my proposal that we "agree to disagree", Daniel said "I do", expressing his acquiescence and his commitment not to sue.

69. Additionally, during that aforementioned conversation I implored of Daniel that if they have any objections or allegations of infringement about any of my marks, they should express their protests to the Trademark Office,

then, at that time, 6 years ago, rather than later when it would be much more expensive for me to defend my case. Daniel clearly expressed that Petitioner does not wish to involve the Trademark Office. Daniel said they rather want to refer any disputed matters to a rabbi (“Gadol” literally meaning “Great Man”) for mediation. When I asked Daniel if I may speak to his father about it, Daniel communicated that his father was too unsettled about the issue for him to discuss it with me. That was the last time Petitioner reached out to speak to me prior to this petition.

70. Additionally, Petitioner further acquiesced to my use of my mark by Petitioner’s lack of action before or after that phone conversation, by Petitioner’s refusal to Protest my marks at the United States Trademark Office, by Petitioner’s refusal to Oppose my marks at the United States Trademark Office, and by Petitioner’s refusal to otherwise safeguard Petitioner’s asserted rights in respective marks of Registration No. 927067 and of Application No. 86713509.

71. Throughout all this history of a period spanning over five and a half years prior to Petitioner first filing a petition, Petitioner has never even identified to me (or to my Father) that its trademark is that (long abandoned mark) of U.S. Registration No. 927067, nor that its mark was the recently filed mark of Application No. 86713509 (which Petitioner likely didn’t use yet at the time which explains why the Application didn’t exist then). Neither has Petitioner revealed to me the Registration No. for any mark it asserts to own.

72. Petitioner never called me again. Petitioner did not follow through on its offer to come with me to a rabbi for mediation. Neither did Petitioner Protest or Oppose my mark, despite my having implored it to do so at the time. Neither did Petitioner send to me any letter to cease and desist the use of my mark. Such explicit acquiescence and even a stated agreement to forebear, followed by silence and inaction, upon which I relied to my detriment, bars Petitioner under concepts of good faith and equity, and arguably even under Contract Law, from cancellation of my mark.

73. Pursuant to 15 U.S.C. §1069, Section 19 of Lanham Act, Petitioner should be barred from petitioning against my mark because the five year limitation which starts from when Petitioner was aware of my mark’s use in commerce has already passed more than four months prior to when Petitioner first took meaningful action against use of my mark, or of its registration.

74. In continuation of previous paragraph: Petitioner has been aware of and has acquiesced for an even longer period of time to my use of servicemark, CupK U.S. registration No. 3883012. Since Petitioner has already acquiesced

to my continued use of service mark CUPK, and is estopped from attacking it at any later date, there is no additional asserted harm posed to Petitioner by even my certification mark maintaining its Registration. [“Morehouse” defense is hereby affirmed].

75. Furthermore, on or around August 8, 2012, Over two years following my conversation with Daniel, mentioned in previous paragraphs, and close to three years prior to the initial filing date of the petition, I contacted by phone, Rabbi Ari Senter, corporate representative and Vice President of Petitioner Kosher Supervision Service, Inc. . Ari is son of Rabbi Harvey Senter, and brother of Daniel. My calling Ari was to inquire whether a then recent invitation to Rabbinical Arbitration was indeed upon request of Rabbi Harvey Senter. The invitation was poorly written, had no author name or signature, and gave no information as to what was being litigated. The invitation was addressed to my Honored Father but not to me, and made no mention of any of my trademarks, nor of anyone doing business as CupK Kosher Supervision.
76. Ari confirmed that Rabbi Ginzburg, a.k.a. Bet Din Agudath Horabonim, had indeed sent the aforementioned invitation on behalf of Ari’s father Rabbi Harvey Senter, a.k.a. Rav Zecharya Senter, And that the matter his father wished addressed was about an organization name the Senters assert they own, without mention of any complaint about my use of my trademark.
77. During the aforementioned conversation, I asked Ari if he has corporate authority to comment on trademark matters, to which Ari replied that he does. Ari repeated what his brother Daniel previously acquiesced, that they are not complaining about my mark nor its registration but rather about the matter of their asserted organization name which they addressed to my Honored Father but not to me. I told Ari that if they have any issues with my trademarks they should direct them to me -as my Father is not the owner of my trademarks. In reply to Ari’s suggestion of Rabbinical involvement to settle any disputes, I proposed that if there is any complaint they have against me that we refer to Rabbi Mordechai Willig of Riverdale for mediation. (Rabbi Willig was Ari’s rabbi and teacher at Yeshiva University). I left that conversation with a confirmation of Daniel’s and now Ari’s acquiescence, and of Rabbi Harvey Senter’s acquiescence, and with a good faith understanding that Petitioner would not litigate against me at all at TTAB, at U.S. Court, nor at any other secular or Government venue. This understanding was further based on the well accepted religious doctrine of Orthodox Judaism that disputes among Jews not be unnecessarily referred to secular Authorities of Government, And which Rabbi Senter’s initial

behavior, And which Daniel and Ari Senter's conversations indicated they wished to follow. This understanding was further based on the cordial relationships which had existed between our families long prior to then.

78. I also had further confirmation of an understanding that Petitioner would avoid taking any future action against my mark's registration because toward the conclusion of my aforementioned conversation with Ari, I said to him that I wish to remain in good terms with him and his family, but if they were to challenge my mark, the standard defense would be to counterclaim against their mark. Upholding this oral agreement was to the clear benefit of Petitioner. I upheld to my detriment my part of the understanding by not preemptively challenging their mark at the Trademark Office for the over three years following. I had good faith expectation that Petitioner would honor their part of the understanding as well. This understanding was further confirmed by Petitioner's not following up with any action at secular venues of litigation until three years later when the Petitioner filed its initial petition.

79. Additionally, Petitioner subsequently abandoned the Rabbinical litigation against my Father, and did not follow up on my offer to Ari that we to refer to rabbinical mediation if they have any complaints against myself. As told to me by the Head of that Rabbinical Court, Rabbi Ralbag of Brooklyn NY, and head of the Kosher certifying agency behind the mark K [inside triangle border], Petitioner's case is officially closed. Petitioner has in effect also waived its asserted claim in regard to Rabbinical arbitration or mediation.

80. Considering all that is stated in each and all of the foregoing paragraphs 67 through 80, Petitioner should be estopped from taking further action that would be contrary to its acquiescence. And Petitioner should be bound by oral contract to uphold its expressed agreement to peacefully co-exist.

#### COLLATERAL ACQUIESCENCE.

81. I affirm the defense of COLLATERAL ACQUIESCENCE: Specifically, During my aforementioned phone conversation with Daniel, (detailed in foregoing paragraphs 67 through 80), I pointed out to him that his company is not the only kosher supervision agency using the elements that Petitioner asserts its mark consists of. I specifically told Daniel that Rabbi Shapiro's trademark also uses those elements. Daniel acknowledged he knew

about the mark I was talking about. To information and belief, the mark is



. As TSDR website lists for this mark: "*Registration Number 1719226 LIVE. Registration Date September 22, 1992 Owner*

*(REGISTRANT) Shapiro, Solomon Goods and Services IC A . US A . G & S: food. FIRST USE: 19890913. FIRST USE IN COMMERCE: 19890913 Translations The caph is a Hebrew letter pronounced as "K". This mark is used on well known Products such as Fox's Ubet® brand chocolate syrup. I asked Daniel if his father ever called Rabbi Shaprio to complain about Rabbi Shapiro's mark. Daniel said they don't mind Rabbi Shapiro using his mark. Daniel as corporate representative of Petitioner, has acquiesced on this issue of competing marks using the elements alleged by Petitioner to belong exclusively to Petitioner. Petitioner has acquiesced to forgo any asserted exclusive right to using these elements in a trademark for kosher certification. Petitioner has explicitly told this to me. Petitioner should therefore be estopped from taking further action that would be contrary to its acquiescence.*

### ESTOPPEL

82. I affirm the defense of Estoppel: Specifically, Petitioner should be estopped from cancellation of my legitimately registered mark for Petitioner's failure to complain earlier, and for its failure to protest or oppose my mark at the Trademark Office, even though Petitioner was implored to do so and was informed of the progress of my mark's registrations. Petitioner also failed to send to me any cease and desist letters which is the customary way of policing trademark rights. At the time of our negotiations of over 6 years ago, Petitioner has not even identified to me or even to my family what exactly is its trademark and under what number it is registered, despite my having requested this information.
83. Furthermore, in regard to the above mentioned dispute over asserted organization name infringement, The Senter's then lawyer Jan Meyer, sent a letter dated April 9, 2010 to my Father, but not to me, alleging an infringement against an unidentified "previously registered trademark". Jan did not identify his client as Rabbi Senter, nor as Kosher Supervision Service, Inc. (neither in singular or plural, and neither with nor without a comma), and even in the CC at below the letter body, it only stated "CC: client". Jan rather wrote that he "represents "kof k"". The letter was unexpected as there was a noticeable delay between my conversation with Daniel and the date of Jan's letter. Here too Jan did not identify Petitioner's mark, did not state it to be either of the respective marks of Application No. 86713509 or Registration No. 927067, nor did Jan identify any other Registration number. Furthermore Jan made no allegation that my mark infringes in any way on any mark that Petitioner now claims to own.
84. Given the many defects in Jan's aforementioned letter, and out of respectful deference to my Father, I found it more advisable for me not to intervene. My Father however did engage a lawyer to respond to Jan. Throughout

the significant number of negotiations Jan had with my Father's lawyer, Jan refused to contact me. Moreover, Jan finally conceded that Petitioner has no claim when Jan was informed by my Father that my trademark was approved by the Trademark Office. The date of Approval for publishing for Opposition of my mark was April 21, 2010.

85. In light of all the foregoing paragraphs 67 through 85, Petitioner should be estopped from cancellation of my mark because such a cancellation now is a contradiction of many years of tacit and even explicit acquiescence to my use of my mark. I relied on Petitioner's inaction to build a business around my ownership of a certification trademark, and even also Registered a service mark CupK, and branded my business with the name CupK Kosher Supervision.
86. I also acted in reliance of the Federal registration of my marks and its strict policing of similar marks. The Examining attorney who processed the Application for my mark even explicitly told me that the mark which Petitioner asserts to own (among other marks with K) does not pose any problem for my mark. I made huge investment and accrued good will in my marks while Petitioner remained quiescent to my actions.
87. My clients have likewise built a business around their goods being certified as kosher and have made considerable investment based on their goods and services being certified by my mark.
88. If Petitioner is now allowed to change its position of acquiescence and tolerance into a position of attacking my mark, my welfare and that of my clients will be materially injured by the misleading representation of Petitioner's corporate representatives Daniel Senter and Ari Senter, and by the Senter's then legal representative Jan Meyer.
89. Furthermore the public welfare will also be adversely affected by a cancellation of my mark's registration, because as long as my mark has the protection of The United States as a registered trademark, imposters who wish to use my mark as a means of misleading consumers into purchasing uncertified goods will refrain from doing so. But if the mark's registration is cancelled, it will be easier for impostors to mislead the public into purchasing non-kosher goods as kosher by using my mark without authorization. The public has benefitted from my mark having this protection as a result of my mark's Registration. But a cancellation of my mark's Registration will deny the public this benefit.
90. Similarly, the welfare of all the many third parties (i.e. subscribers to my supervision service, and licensees of my marks) who benefit from the use of my registered trademarks will also be adversely affected by a cancellation of

my mark's Registration. These third parties rely on the prestige of their products and/or services being approved and certified by my Federally Registered trademark as part of their marketing strategies. Many of these parties have also gone to considerable expense of printing and advertising my mark on and along with their advertising materials, products labels, and packaging, (and perhaps even their storefront) on the expectation that the mark will remain available for their long term use as long as they comply with my mark's standard specifications. A cancellation of my mark's registration will deny these many third parties of these benefits.

91. Furthermore, if my mark's registration is cancelled based on the grounds as set forth by Petitioner, then my mark will likely not be allowed to be used by third parties anymore. This will then damage all of these third parties due to their consequently being required to dispose of their existing advertising materials, product labels, and packaging materials, or at least significantly deface these materials by removing or covering my mark. A cancellation of my mark's registration will therefore cause material injury to all these parties as a result of petitioner's misrepresentations.

92. Furthermore, the welfare of even merchants who are not my clients will also be adversely affected by a cancellation of my mark maintaining its Registration, because the local supply of Kosher certifiers with a Registered certification mark is so narrow so that any additional competition in supply helps bring much needed options of choice to the marketplace.

93. Petitioner should be Estopped from changing its position of acquiescence and tolerance which allowed the public and the marketplace to benefit from my mark maintaining its Registration, to a position of attacking my mark, and thereby denying the public and the marketplace of the benefits enjoyed from my mark having the protection of a registered trademark. A cancellation of my mark's registration will therefore cause material injury to all these parties as a result of petitioner's misrepresentations.

94. Additionally, Petitioner has also been egregiously unreasonable in its delay of over Forty (40!) years for which Petitioner took to file Application No. 86713509. Petitioner's egregious delay of over Forty years may even be interpreted as an abandonment of any intention to protect the rights of that mark, And that Petitioner has assigned it to public domain. Petitioner should therefore be Estopped from changing its position of assigning the mark into Public Domain to later reclaim the mark for its exclusive use.

95. In light of all foregoing paragraphs 67 through 95, In Equity, and arguably even in Law, Petitioner should not

be allowed to conveniently change its position, And should be estopped.

#### ACQUIESCENCE TO EXTRANEOUS AND THIRD PARTY REGISTRATIONS

96. Petitioner was informed of third party registration and widespread use of an almost identical mark used on same products that Petitioner would want to certify, same category, same channels and customers. If Petitioner was really concerned about the harm it alleges it suffers from my mark's Registration, then Petitioner should have all the more so petitioned to cancel that third party's mark. Petitioner rather acquiesced that it has no exclusive claim to the elements of its asserted marks.
97. Furthermore, it also follows that Petitioner is not being harmed by my certification mark, despite Petitioner's assertions to the contrary, because any asserted infringement or dilution of which petitioner might pray for relief has already happened in even greater measure due to Petitioner's acquiescence in regard to third party marks. Even if Petitioner's were to assert that my mark harms its mark, my mark's continued Registration will not add any harm to the harm which is already in place by third party marks, and which petitioner has acquiesced to. Petitioner has acquiesced to forebear such asserted infringement and dilution.
98. I Affirm the Morehouse Defense: Specifically, Petitioner at the time the petition was filed, and for a period of three months following, has not petitioned to cancel and has not even alleged harm to its asserted marks based on the U.S. Registration of my service mark CUPK which as contended by petitioner (in petition of the related proceeding No. 92062710) covers substantially identical goods and services as now alleged by Petitioner in its related filing. Throughout the period of over 5 and a half years that it has been aware of my use of CUPK, Petitioner has not even sent to me a letter to cease and desist use of this service mark. Petitioner at the time of filing the initial petition, has in effect acquiesced to my use of CupK service mark and to the U.S. Registration of CupK.
99. If Petitioner conceded and acquiesced that there is no Dilution to the pleaded marks coming from my service mark CUPK, and that there is no likelihood of confusion coming from my service mark CUPK, then all the more so is there no Dilution, and no Confusion coming from my Registered certification mark which Petitioner asserts is merely "referred to in spoken language as" Cup K. It would therefore be pointless for Petitioner to assert a cause for claim against the Registration of my certification mark while petitioner has done nothing at the time to protest against my service mark CupK and has in effect acquiesced to its U.S. Registration. [amplified logic of the

“Morehouse” defense:].

100. Even in these proceedings, Petitioner has not added to the mark which Petitioner seeks to cancel, any additional claim against CUPK. Petitioner at the time of filing the initial petition, has in effect acquiesced to my use of CupK service mark and to the U.S. Registration of CupK. I relied to my detriment on Petitioner not including within this petition any complaint about my Mark CupK, by my revealing facts within the motion practice of this proceeding which Petitioner then used within another proceeding. I also relied to my detriment on Petitioner’s inaction by my spending \$100 on the fee for a section 15 declaration for my mark CupK. Petitioner did not upload any petition against CupK in time for the petition to be showing within the ESTTA system.

### LACHES

101. I affirm the defense of Laches: Specifically, A delay of action by a trademark owner, of five years since being informed of the use of a potentially infringing mark, is unreasonable. For over five and a half years, Petitioner knew about my trademark and my mark’s Registration yet has done nothing. Petitioner has been unreasonable in its delay in pursuing its alleged rights vis-a-vis myself, as over five and a half years prior to when Petitioner filed to cancel registration of my mark, Petitioner had actual notice directly from me of the use of my mark and its Registration being in progress and open to Protest and Opposition. Petitioner has peacefully co-existed with me for over five and a half years without prior complaint. Such negligence should not be rewarded, And this cancellation should not be granted due to laches.

102. Petitioner has also been egregiously unreasonable in its delay of over Forty (40!) years for which Petitioner took to file Application No. 86713509. Furthermore had Petitioner’s Application waited just a few days longer my mark would have been declared incontestable and Petitioner arguably will have lost any hope of ever registering the mark of Application No. 86713509 due to my mark’s prior use. Petitioner’s egregious delay of over Forty years may even be interpreted as an abandonment of any intention to protect the rights of that mark, And that Petitioner has assigned it to public domain. Such negligence should not be rewarded, And this cancellation should not be granted due to laches.

103. Furthermore, it is inequitable of Petitioner to have waited until the last business day prior to the fifth year anniversary of my mark. Petitioner (e.g. the Senter’s) tormented me by leaving me with anticipation of my

mark graduating to incontestability after that long five year wait, to only be followed by cringing disappointment that my mark's incontestability has been postponed for the duration of this cancellation process. This torment could have been conveniently avoided if Petitioner would have taken the comparatively simple and inexpensive step of Protesting my mark while it was still open for Protest, or by Opposing it while it was open for Opposition, and when Petitioner was implored to do so by me, over five and a half years prior to the initial filing of this petition. Petitioner could have tried to protect its mark that way. But Petitioner rather decided to be unnecessarily cruel, and even went to the expense of paying its lawyer untold fees just to do impart unnecessary emotional torment and financial expenses upon me. Petitioner's cruel delay should not be rewarded and cancellation should not be granted due to laches.

104. Petitioner's entire Petition must presume an "information and belief" that its "Marks are referred to in spoken language as "Kof K"". Petitioner has not sufficiently asserted when its marks have first been "referred to in spoken language as "Kof K"". But even if these spoken references occurred prior to my mark's Registration, Petitioner to information belief and as reflected by the USPTO TESS database, has not Applied to have KOF K registered as a trademark.

105. Petitioner has been unreasonable in its delay of over Five and half years from when Petitioner knew about my mark's registration yet did nothing to secure any rights in KOF K. Furthermore had Petitioner's Application been delayed just a few days longer my mark would have been declared incontestable and Petitioner arguably will have lost any hope of ever registering the mark Kof K due to my mark's prior use. Such negligence should not be rewarded, And this cancellation should not be granted due to laches.

UNCLEAN HANDS, FRAUD

PETITIONER INFRINGED ON PRIOR MARKS AND WITHHELD MATERIAL DISCLOSURES

106. I affirm the defense of Unclean Hands: Specifically, To information as gathered from the online archives record at USPTO, When Harvey Senter, original owner of record of the pleaded registration and its Mark, applied to register the mark at USPTO, he was himself infringing on other marks both famous and non-famous which were then in continuous use and registered prior to the pleaded marks.

107. Furthermore, Harvey Senter and Petitioner withheld from Examining Attorney and renewing paralegals the

pivotal disclosure of this material information which was required of him by law. During Applications and subsequent renewals of Registration No. 927067, the party seeking to Register and subsequently to Renew the mark, withheld that this mark posed a likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d); with prior registered marks.

108. The party who sought to Register and subsequently to Renew the Mark of the pleaded registration also withheld other disqualifications which applied to the mark on the grounds specified in Section 2(e) of the Act, 15 U.S.C. § 1052(e), including that its mark is merely descriptive and even generic.

109. Even now, to this very date, Petitioner still hasn't disclosed that a sole letter K in a kosher certification mark is a generic representation for kosher, and that K is dictionary defined as a universal symbol representing the kosher quality of food, Or that the Hebrew letter asserted to be the design element of the pleaded marks is the equivalent of K and the first letter of כשר which is the word KOSHER in its original Hebrew.

110. Additionally the party who sought to Register and subsequently to Renew the mark of Registration No. 927067 still hasn't disclosed that the design element of the mark as perceived by the pertinent audience looking for a kosher certification mark, is a non-Latin letter which is generic descriptive for KOSHER in its original Hebrew, and which also is a translation of Letter K, which is as explained above (in prior paragraph 109), is a generic and dictionary defined term for KOSHER.

#### PETITIONER ALLEGES OF ME WHAT PETITIONER ITSELF HAS DONE TO OTHERS

111. Petitioner seeks Equitable relief from an asserted harm which Petitioner itself has inflicted upon others.

112. Moreover, to information and belief, the rights which Petitioner asserts it owns and seeks to protect were themselves acquired through inequity. Petitioner therefore has no Equitable standing to seek relief against an asserted harm inflicted by my mark against the pleaded marks.

113. As a specific example of foregoing two paragraphs: As presented by the TSDR record, Harvey Senter

previously used the certification mark  for kosher, Registration No. 9273670 Registration date Nov 09 1971 FIRST USE IN COMMERCE: 1970, 07, 00. This is so even though this mark was infringing on prior kosher certification marks consisting of K. (The record indicates that the mark's owner then abandoned this mark

on Jan 3, 1978).

114. Furthermore, Petitioner's asserts that mark of Registration No. 927067 was continually in use since April 1971, and that mark of Application No. 86713509 was continually in use in use since 1972.

115. In 1971 and 1972, when Harvey Senter purportedly switched from using  mark of Registration No. 9273670 to instead use the pleaded marks, there was already in use a competing widely used and famous prior mark  consisting of an element pronounced as K or "Kay", just as Petitioner may seem to assert for the pleaded marks. As is shown in the TSDR records on the website run by US Trademark Office, this prior mark Registration No. 2094030, and prior registrations No. 0795748; (and others) have first use in Commerce of 1936 10, 01. The mark was prior registered as certifying Kosher,

116. As is the case with the pleaded marks,  also consists of a letter K with a letter or "design" around it, except that what surrounds the K in  is a complete circle "design" rather than the design used in .

117. At the time Harvey Senter purportedly switched from using  to  he was to information and belief, well aware of the continuous prior use of  yet he chose to abandon use of  to later register  despite the strong similarity which  bears to .

118. Furthermore, to the general populace, the design element of  is simply an incomplete border.

119. By the doctrine of equivalence which makes an incomplete border have the same commercial impression as a complete border, the mark  so resembles the prior use , that Petitioner in effect was using and then sought to register what plausibly is a colorful imitation of, and even a counterfeit of, someone else's prior use mark.

120. Using the same reasoning with which Petitioner asserts a Likelihood of Confusion and Dilution in regard to



, a Likelihood of Confusion and Dilution would have then been all the more so attributed to



121. As an alternative plea: If the pleaded marks have come to be “referred to in spoken language as “kof k”” it was

due to the necessity of avoiding confusion with the previously used and registered mark  which was already “referred to in spoken language as” OK pronounced “Oh Kay” prior to  ever having been in use .

122. Furthermore, at the time  was applied for Registration, the letter K to information and belief was not yet as generic or merely descriptive for kosher as it is now, and K was not yet as routinely disclaimed as an element in a certification mark. This makes Petitioner’s asserted behavior all the more inexcusable in its infringement of the prior third party marks since use and Registration of the pleaded marks has contributed to the eventual genericization of K within the prior registered kosher certification marks.

123. Additionally, some 45 years prior to the asserted date of  first being used, there was another third party kosher certification mark,  Registration No, 636593 Registered 1956, date of first use in commerce 1925, and to information and belief is stated by its owner be “the world’s most famous certification trademark”.

124. The design element of  when viewed sideways looks like a U. (and visa versa). By the reasoning of Petitioner’s own assertions, its marks then infringed on and diluted this famous mark  by diluting the unique association this prior mark held on  .

125. Additionally, by Petitioner’s own assertions it also infringed on the prior use kosher certification

mark  Word Mark CK REGISTRATION No. 987134, FIRST USE: 19620101. FIRST USE IN COMMERCE: 19710400, owned by a third party which predates Petitioner’s asserted use of the pleaded mark by

just over a decade. (Though the date of commercial use seems concurrent).

126. The pleaded mark  is almost identical in appearance and commercial impression to this prior third party

mark . The design element of the pleaded mark, is equivalent to a mirror image of the stylized C in the prior mark, And the k letter elements of each mark are almost interchangeably identical. Petitioner's asserted mark is therefore plausibly a colorful imitation of, and even a counterfeit of this prior used mark. And even in sound, the Hebrew letter which Petitioner calls "kof" would by Petitioner's asserted method of Hebrew diction be phonetically identical to letter C of this prior third party mark.

127. In light of the foregoing paragraphs 11 through 126, Considering the harm that Petitioner's asserted mark did to prior used and registered marks, both in dilution and in creating likelihood of confusion, Petitioner's seeking

Equitable relief for a cause asserting that  somehow dilutes or creates a likelihood of confusion with  or  is a glaring hypocrisy and inequity.

128. Additionally, To information and belief, Petitioner uses on it's website a phrase containing the words THE RECOGNIZED GOLD STANDARD OF KOSHER which infringes (or has infringed) on the Trademark THE GOLD STANDARD IN KOSHER, previously owned by a third party and registered under Registration No. 2831338 first use in commerce 2002.

129. In summary of the foregoing paragraphs 106 through 128, considering what seems to be Petitioner's extensive history of infringing on the prior marks of other parties, and considering other inequities committed by Petitioner, Petitioner has no Equitable standing to allege as cause for claim assertions of likelihood of confusion, or dilution against anyone else's marks. He who comes to Equity must do with clean hands.

#### PETITIONER'S FALSE ADVERTISING

130. I affirm the defense of False Claims in Advertising: Specifically, Moreover, Petitioner asserts in paragraph 6 of the petition that it seeks relief to protect what it asserts is a perception among "public and trade" that the products Petitioner certifies are to "the highest standard of kosher law". However Petitioner has no equitable claim to such

good will because even if such good will were to exist, to information and belief it would have been obtained at least in part through false claims in advertising.

131. As a specific example: To information and belief, Petitioner’s website in numerous places on numerous pages advertises to the effect that *“For almost 50 years, KOF-K has been dedicated to maintaining the integrity of the kosher status of foods in accordance with the highest standards of kosher law.”* *“Only those products meeting the highest standards of kosher law are permitted to display the KOF-K symbol. In today’s complex world, where technology changes literally overnight, KOF-K’s international network of Rabbinic Administrators and representatives closely supervise, monitor all food production information.”* [emphasis added] Petitioner even says this on the certification standards sheet it submitted to USPTO as part of Application No. 86713509.

132. To information and belief, Petitioner’s assertions about the pleaded marks being used exclusively on goods meeting the highest standards of kosher law are false, and even contradicted by Petitioner itself in another publication it posts in a glossary linked to its main website. Specifically: Petitioner concedes its certification of what it calls “cholv stam” dairy goods which Petitioner concedes do not meet “the higher standard” which Petitioner calls “cholv yisrael”.

133. To information and belief, it is also self-evident to those with expertise in kosher law, that there cannot be such a thing as a highest standard of kosher law.

#### ADDITIONAL AFFIRMATIVE DEFENSES, OTHER DEFENSES, AND AMPLIFIED DENIALS

134. Petitioner’s conclusions within the petition are unfounded, non-conclusive, and even absurd. Specifically, as stated in foregoing and following paragraphs.

135. In paragraph 18 of the petition, Petitioner’s incorrectly extending interpretations of “likelihood of confusion” under the pleaded statute, to include a likelihood of mistaken associations between the owners of the respective certification marks, is unwarranted as a novel legal theory.

136. Failure to Meet the Required Pleading Standard: Even if the complaint were pleaded by the statute of false associations, the petition as a whole fails to meet the required pleading standard for false associations [USC 1056 1e]. Specifically, the petition as a whole does not sufficiently specify –even in brief- who the relevant public is, or why my mark should immediately bring to mind the words “Kosher Supervision Service, Inc.”.

137. Failure to State Applicable Statute: Petitioner, in paragraph 18 of the petition, insufficiently pleads a statute which addresses marks that are not yet registered, but which does not address a mark that is already registered, and whether there would be grounds for cancellation. The allegation and the petition as a whole do not plead sufficient statute. And do not give fair notice as to which statute relevantly applies.
138. Unwarranted Legal Contentions: Petitioner's unwarranted extension of similarities in sound, to include the sound of a commercial impression of a mark, rather than the direct sound of the mark itself, is untenable as a novel legal theory.
139. Unwarranted Factual Contentions: The sound of K [and design] does not go beyond the sound of K. The sound of a Hebrew letter does not extend beyond the phonetic equivalent of the letter. No letter of the Hebrew or English alphabet (with possible exception of Q and Y) is sounded as a three letter syllable. No letter of the Hebrew alphabet is sounded as kof.
140. Unwarranted Legal Contentions: Petitioner's unwarranted extension of the Doctrine of Foreign Equivalents, to include identifying a design as a Hebrew letter, then translating it to Hebrew as kof, then translating it in reverse back to English as CUP is untenable as a novel legal theory.
141. Unwarranted Legal Contentions: Petitioner's unwarranted extension of the Doctrine of Foreign Equivalents, to include identifying a design as a CUP, then reverse translating it to Hebrew as kof, is untenable as a novel legal theory.
142. Unwarranted Factual Contentions: CUP when translated to Hebrew is not kof or כ; Kof or כ when translated to English is not CUP.
143. Reducio Ad Absurdum: Petitioner's assertions of likelihood of confusion and dilution are so overreaching in their scope, that by Petitioner's own logic and methods of reasoning, there are already many other third party marks and registrations which similarly pose a likelihood of confusion and dilution with the pleaded marks, so that no further harm may be caused by the continued use or registration of my mark.

CONFUSION NOT LIKELY OR EVEN POSSIBLE

144. My mark does not contain a Hebrew letter כ nor any Hebrew letter Petitioner calls kof.
145. Anyone who were to actually encounter my mark , could not possibly confuse my mark to be a mark

consisting of a Hebrew letter which petitioner calls “kof”.

146. Anyone who were to not have even a vague recollection of the general information that the pleaded marks contain a Hebrew letter, would thereby also not recall the specific information that the pleaded marks consist of a Hebrew letter which petitioner calls kof. A recollection of the specific requires a recollection of the general.

147. Anyone who would not recall even vaguely that the pleaded marks consist of a Hebrew letter which Petitioner calls kof, would thereby not be confused “due to similarities in sound between Cup K and Kof K”.

148. The design element of my mark, as a sketch or image featuring dimensional perspective and shading, and my mark as a whole, is of a categorically superior level of distinctiveness than that of the pleaded marks. Specifically: The design element of my mark is not merely a typographical letter or even a design. The “Description of the Mark” given within the July 31, 2009 Application states, “The mark consists of an image or sketch of a cup, together with the letter K”, And the registration states “THE STIPLING IS FOR SHADING PURPOSES ONLY”. Furthermore, the impression of a unitary relationship between the K and the cup is given within the application as being “together”.

DISSECTION NOT ALLOWED, NO CONFUSION/DILUTION EVEN WHEN DISSECTED

149. My mark as encountered in commerce is a unified whole which is not dissected into component elements.

150. When the elements of my mark appear in simultaneous unison the mark is a unitary compound that is different from and more than the sum of its elements. Specifically, it produces a commercial impression of a K, standing within or being poured from the dimensionally perspective and shaded image or sketch of a cup. This added distinctiveness further differentiates my mark from the pleaded marks so that confusion or dilution is not likely.

151. The K within the pleaded Marks is of little if any distinctiveness and cannot dominate nor even contribute as an indicia of origin for the Marks to the relevant public.

152. K is dictionary defined as an abbreviation of KOSHER, especially when enclosed in a circle.

153. K as it appears in kosher certification symbols is merely descriptive of the kosher quality of the goods it is used on or in connection with.

154. K appearing on or in connection with kosher goods is merely descriptive of KOSHER goods.

155. K merely indicates the key characteristic of the kosher goods for which the pleaded marks may be used on as

reflected by the respective registration and application.

156. K appears in so many kosher certification symbols in use within United States, And appears in so many kosher certification trademarks registered at USPTO, that K is already diluted in the penultimate to the threshold of being generic, and even beyond, So that the K within my mark does not and cannot dilute any further the K within the pleaded marks. And is not given any notice by consumers as a factor for which to confuse conflicting marks.

157. K is disclaimed within the registration of my mark.

158. K is disclaimed within the U.S. registrations of numerous other kosher certification marks at USPTO.

159. There are so many kosher certification symbols consisting of K [and design], or of K and other letter(s), that the relevant public looks primarily or even only toward the respective designs when considering a kosher certification symbol consisting of k and a design, or of K and other letter(s), so that K is effectively ignored.

160. Alternatively: Even if K within the marks were to be noticed, the large assertive K to the right of my mark is sufficiently dissimilar to the diminutive k to the left of the pleaded marks.

161.  the design element of my mark K [and design] is not and cannot be confused for, And does not and cannot dilute,  or , the design elements of the pleaded marks. Specifically, Any Hebrew literate person who would actually encounter  would know  is not a Hebrew letter. And any Hebrew illiterate person would not have even a vague recollection of what the names of  or  are for there to be any possibility of confusion or dilution between  and  or .

162.  which shares no common attribute of appearance, sound, meaning or commercial impression with  or  cannot be confused for, nor dilute any unique associations the pleaded marks may have with,  or .

163. CUP is not a Hebrew letter, nor the name of a Hebrew letter, nor the sound of a Hebrew letter, nor the meaning of a Hebrew letter, nor the meaning of the name of a Hebrew letter.

164.  or  as a design, and even as a Hebrew word transliterated by Petitioner as KOF, is not something to

pour with or drink from.

165. My mark as encountered in commerce, and as registered, is a unified whole that is not encountered or evaluated one element at a time.

166. Petitioner's impermissible dissection of my mark into components K and , and Petitioner's subsequent arbitrary assignment of sequence to those elements by placing  before K, and Petitioner's then subjective assignment of a word and sound of CUP to , robs the mark of its unitary and simultaneous visual nature.

167. My mark as a whole is not at all similar to the pleaded marks.

168. My mark is inherently distinct, and also possesses an additional meaning suggestive of kosher certification symbolized by K, being poured from the cup onto the goods the mark appears on or in connection with.

169. As indicated in the Application for my mark, a cup also symbolizes my Levite tribal lineage.

170. The cup is also primarily commemorative of a Human Rights victory for Kosher observance achieved by my Honored father involving litigation about servicing of a cup of coffee. The incident was widely publicized in the press with news outlets referring to Rabbi Israel Steinberg as the "coffee cup rabbi". The application record for my mark includes samples of these news reports. The association between CUP, KOSHER, and RABBI STEINBERG is so strong and unique that the distinctiveness of my mark surpasses even that of arbitrary and fanciful trademarks to approaches the unique distinctiveness of an autograph.

#### GOOD FAITH IN USING AND APPLYING FOR TRADEMARK REGISTRATION

171. I Affirm the defense of Good Faith: Specifically, Use of my mark, and my subsequent decision to apply to register it at the Patent and trademark Office was done in exemplary good faith: Specifically, My decision to use my mark was based on my mark's inherent merits. I would have chosen to use my marks regardless of whether the pleaded marks were in use, or whether petitioner even existed.

172. Furthermore, to recollection and belief, Matt Kline, the Examining Attorney who processed the Application for my mark emphatically stated during a phone conversation that my mark would not pose a likelihood of confusion with mark of Registration No 927067. (Application No. 8613509 didn't exist then). Mr. Kline even laughed and

emphatically stated about mark of Registration No. 927067 that “It’s not a trademark! It’s two marks. And neither of them can be registered”.

FAIR USE IN MY MARK of ELEMENTS CUP and K

173. I affirm the defense of Fair Use: Specifically, In regard to my mark in particular, my use of the disclaimed letter K is there so that viewers will know my mark certifies kosher. And the design element of my mark is not even a Hebrew letter “kof” to begin with that my mark should need to excuse itself with “fair use” in the first place.

DILUTION NOT POSSIBLE.

174. I repeat here all foregoing paragraphs 144 through 173 as if stated here.

175. To the relevant public consisting of consumers whose purchasing decision would be swayed by the presence of a kosher certification symbol, and who would recognize the letter K and the Hebrew letter Petitioner calls kof, K and even the Hebrew letter Petitioner calls kof are not distinctive within a kosher certification symbol, and are already diluted in the penultimate to the threshold of being generic and even beyond.

176. The Hebrew letter Petition calls kof is not distinctive within a kosher symbol. As the Hebrew equivalent of K that letter is likewise already diluted in the penultimate to the threshold of being generic and even beyond.

177. The Hebrew letter Petition calls kof is also the first letter in and an abbreviation of the word כשר which is the word KOSHER in its original Hebrew. As such, to the relevant public, the letter would not be of distinctiveness within the context of the pleaded marks, even without it being the equivalent of K.

178. To information and belief, Petitioner on tab 3 of its own website accessible at <http://kof-k.cn/> and archived at <https://web.archive.org/web/20160311071826/http://kof-k.cn/> posts a graphic equation  = Kof=K=Kosher. And a byline in reference to  as “The Hebrew letter for the word which means Kosher”.

179. Both the letter K, and the Hebrew letter petitioner calls kof are and were in use by the public domain as indicating the kosher quality of goods those letters appear on or in connection with, well before Petitioner ever used those letters.

180. Petitioner is not the only party who owns a U.S. registration for a kosher certification mark consisting of the letter K, and the Hebrew letter Petitioner calls kof, or a mark consisting of the letter K and a design which may be

interpreted to be the Hebrew letter petitioner calls kof.

PLEADED MARKS AND PETITIONER ARE NOT FAMOUS

181. To information and belief, Petitioner and the pleaded marks are not famous within conventional social media: Specifically, to information as gathered from the webpage, Petitioner's Facebook page accessible at <https://www.facebook.com/kofkkosher/> and archived on August 31 2015 at <https://web.archive.org/web/20150831202835/https://www.facebook.com/kofkkosher> had less than 555 endorsements or "likes", despite the Facebook page having been active for years, with a first posting dated there at December 10, 2104. And the site having been founded in 2012 or earlier. As of May 5 almost 9 months later, Applicant has less than 634 likes averaging less than 10 likes per month. Even non-famous companies and individuals have more than 700 likes, and generate more than 10 likes per month.
182. In contrast to previous paragraph, to information as gathered from the webpage, the Facebook page for KOFK Kingdom of Knuffle entertainment website accessible at <https://www.facebook.com/kingdomofknuffel/> as of May 5 2016, has 1234 likes.
183. Petitioner's assertions of fame are similarly contraindicated by its LinkedIn page which to information as gathered from the webpage had only a mere 108 followers as of May 9, despite the page stating that the company itself has over 200 employees.
184. To information and belief, the vast majority of the consumer population within United States, and even a majority of the population of kosher consumers which includes the "Haredi" demographic, are not aware of the pleaded marks being used on any specific good offered for sale in Untied States. And are not aware that either of the pleaded marks are trademarks certifying kosher.
185. As an alternative plea: To information and belief, even among the demographic who might have seen the pleaded marks, the vast majority among them would not know the name of "Kosher Supervision Service. Inc." or even the name of the rabbi behind it.
186. The vast majority of the consumer population within United States are not plausibly presumed to be able to identify any specific kosher certification symbol at all.
187. The vast majority of the consumer population within United States has no knowledge of the existence of a

Hebrew letter which Petitioner calls kof, nor of any Hebrew letter called kof, And cannot identify the design element of the pleaded marks as being a kof, or any other name for the Hebrew letter כּ.

188. The allegations and the petition as a whole do not assert –even in brief- any fame or recognition for the word KOF K.

189. My mark and even the word Cup K does not pose a likelihood of confusion with KOF K itself. Specifically, as a word commonly found in English language, CUP is not likely to be confused with or dilute KOF which is not commonly found in English language. If the pleaded marks were to be famous, consumers would recall KOF at least to the extent that it is not an English word.

190. My mark and even the word Cup K does not dilute even KOF K itself, and all the more so that it does not dilute the pleaded marks.

191. As Petitioner asserts to have been concurrently using more than one mark, the two pleaded marks dilute each other and detract from each other’s purported distinctiveness. Additionally, on the alternative that Petitioner is the successor in title to Harvey Senter, then as stated above in paragraphs 113 through 117, Petitioner has for a significant period of time used three marks concurrently.

NO ACTUAL CONFUSION

192. In the over seven years since my mark was in commercial use, not one person has ever told me or those privy to me, that upon actually encountering my mark they had even a doubt that it was what they recalled to be one of the pleaded marks. This is so even though I have received an estimated several dozens of phone call inquiries per month about food service establishments certified by my mark from the customers who encounter my mark on the kosher certificate displayed there. Neither has Petitioner ever notified me of any specific incident of such confusion, despite our previous conversations and the channels of communications having remained open. Even within the petition itself, Petitioner does not sufficiently identify any such incident.

193. And no one, not even “an idiot in a hurry”, ever entertained even a doubt that my mark  displayed in front of them on a kosher certificate was actually the mark of  or . And neither did anyone even

slightly entertain a notion that Petitioner has switched from using any of the pleaded marks to all of a sudden begin using my mark.

Sophisticated Consumers:

194. To information as gathered by investigation, there are extensive resources available to kosher consumers to assist them in identifying which kosher symbol is for which rabbi's supervision.
195. The relevant public who are consumers who base their purchasing decision on the presence of a kosher symbol, are by definition quite discerning as to the various kosher symbols and are not likely to be confused by a mark even slightly dissimilar to the mark they want to rely on when making purchase.
196. The kosher observant consumer who is meticulous enough about kosher for their purchasing decision to be influenced by the presence of a kosher symbol which they seek to be present on the goods, will by definition have more than a vague recollection of the symbol they insist on being present.

PETITIONER INCORRECTLY DESCRIBES THE MARKS

197. KOF, as a transliteration of the Hebrew word קוף, means MONKEY.
198. KOF, as a transliteration of the Hebrew name of a letter of the Hebrew alphabet is the name of ק, displayed here by typing e key on the computer Hebrew keyboard.
199. As gathered by the petition asserting use of K and כ as opposed to K and ק Petitioner has never used in commerce a mark consisting of K and Hebrew letter Kof.
200. The pleaded registration does not award rights to Hebrew letter Kof, nor to any Hebrew letter.
201. On the alternative that Petitioner is a successor in title to the pleaded marks: The assigned rights upon which Petitioner might assert to rely on, and as conveyed by any execution which may be of record, does not extend beyond "Stylized K".

Use of My Mark is Prior

202. To information gathered from the record of specimens for the Mark of the pleaded Application, the Mark was not in commercial use at any time prior to when my mark was in use.
203. Alternatively: The mark of the pleaded Application, was not in prior commercial use for the goods upon which

my mark is in use within the geographical areas where my mark was in prior use.

ALLEGATIONS OF THE PETITION DO NOT RISE ABOVE THE SPECULATIVE AND SUBJECTIVE

204. In further specificity of the Affirmative Defense given by rule 12(b)(6), of FRCP as interpreted by the Courts in regard to cases involving Iqbal and Twombly: The allegations as a whole do not rise above the speculative. Petitioner arbitrarily assigns a sequential pronunciation to the design element and literal element within my mark. And to the design element and literal element within the pleaded marks.
205. The coding information given by USPTO for the design element of my mark is “mug” rather than “cup”.
206. Petitioner’s contention that the sound of the design element of the pleaded marks is a Hebrew letter “kof” is merely arbitrary and speculative. Petitioner itself has in the past used other spellings in English such as “Kaf”.
207. Third party registrations at USPTO for marks containing the Hebrew letter petitioner calls “kof” use different spellings and pronunciations for the name of that letter.
208. To the general population who is not Hebrew literate, the design elements of the pleaded marks are not interpreted to be kof.
209. Petitioner’s contention that, how a mark is “referred to in spoken language” is the same as the sound of the mark, is unwarranted and untenable as a novel legal theory.
210. Petitioner does not actually aver any pronunciation or sound for my mark, or for the pleaded marks, limiting its assertions of “sound” to how the marks are “referred to in spoken language”. Marks may also be referred to in spoken language as “kosher symbols”, but that would not be a pronunciation.
211. How a mark is “referred to in spoken language” is not the sound of the mark as used in the context of DuPont factors, Polaroid factors, and other well established standards for evaluating likelihood of confusion and dilution.
212. Petitioner’s contention that how a commercial impression of a mark may be pronounced or referred to in spoken language, is the sound of the mark itself, is unwarranted and untenable as a novel legal theory.
213. Petitioner’s unwarranted contentions and speculative assertions do not rise to the level of plausibility as a cause for complaint.

Petitioner's Assertions of harm are not due to the continued registration of my mark

214. Petitioner's Assertions of harm are not due to the continued registration of my mark: In paragraph 18 of the petition, Petitioner asserts it will be harmed by the public being led to associate products supervised by mark, with products certified by its mark. But the function of a certification mark is not as an indicia of origin for the goods it certifies. The harm asserted by Petitioner is therefore non-existent because Petitioner was never entitled to exclusive association with the goods it certifies in the first place. And even without a trademark, I still have full right to certify even the same identical goods certified by Petitioner, and to place any mark, and even my name right alongside Petitioner's mark on the same product label.

215. Furthermore, Petitioner can be forced to license use of its mark on any product meeting its standard specifications, and even on products that my mark certifies, and even on products that I manufacture and sell.

216. Petitioner has not sufficiently asserted that the food which my mark certifies as kosher does not also meet and even surpass the standard specifications of Petitioner's mark. Petitioner has therefore not sufficiently asserted that the products certified by my mark should not be entitled to be certified even by petitioner's mark itself -and all the more so by my mark which Petitioner asserts is merely similar but not identical to Petitioner's mark.

217. My mark is not registered as certifying for kosher. The certification of permissibility for use listed within my mark's registration exceeds that of merely kosher listed in the pleaded registration/application. As a specific example, my mark may also be used to certify food as permissible for use even on Passover when kosher food is not necessarily permissible for use.

218. I, or persons to whom I am privy, have become entitled to use of K, and to use of Hebrew letter כ as a result of their concurrent lawful use in commerce prior to (1) to the filing dates of the applications for either of the pleaded marks, (2) and prior to the date petitioner asserts it first used the pleaded marks.

HIGHER LEVEL OF PRESTIGE OF MY MARK DISTINGUISHES IT FROM THE PLEADED MARKS

219. [The following 4 paragraphs are asserted to information and belief]: Petitioner's mark was never used to certify producers of prepackaged cured meats, kosher slaughter houses, kosher meat processors, kosher butchers, or the goods they produce. Throughout Petitioner's asserted history of over 40 years, Petitioner's mark was never entrusted with this sacred task of overseeing its kosher meat operations. Certification of these operations

is perceived to require a special rabbinical ordination and expertise, to which Petitioner's commercial reputation does not extend.

220. My mark being used within these product categories lends an added level of respect and commercial impression of the mark which extends even to other products it appears on.



221.  has earned a respect among consumers as being a certification from a rabbi of great responsibility, who has the expertise to supervise even industrial kosher meat production and processing. This is in contrast to the pleaded Marks which do not command such respect. This added respect for mark adds to its distinctiveness so that confusion or dilution with other marks is not likely even on goods other than kosher meat.

222. To information and belief, the record of empirical compliance with the respective certification standards specifications for my mark is of superior quality to that of Petitioner's. As specific example Petitioner often has its mark on un-kosher products and is then forced to advertise a mistaken use of its mark on the un-kosher food. Petitioner even has a page of its website devoted to this function. This is in contrast to my mark which is not found on un-kosher food.

223. [counterclaims follow in the accompanying paper]

## COUNTERCLAIMS

In further answer to the Petition, having paid the requisite fee, I plead and aver the following counter-claims:

Additionally, Pursuant to 15 U.S.C. §1064 (3), Section 14(3) of the Trademark Act, and additional statutes, I hereby seek cancellation of Kosher Supervision Service, Inc.'s ("Petitioner's" or Petitioner's/Counter-Respondent's") Registration of wordmark K, pictured as , (henceforth "the Mark"), Registration No. 927067, (henceforth "the Registration"), Registration date January 11, 1972, to the full extent of what it covers: Namely "Food", and to the full extent of the elements it consists of:

Namely: The letter K within the mark as it appears within the registration, And  the design element which appears within the mark as it appears within the registration, And the Mark as a whole, And the Registration as a whole, And aver as follows:

### COUNT ONE: THE MARK AS A WHOLE IS GENERIC AND ENTIRELY COMPRISED OF GENERIC ELEMENTS

1. I repeat all the paragraphs of my foregoing answers to petition as if stated here.
2. Petitioner/Counter-Respondent in its petition to cancel (paragraph 4 of the petition) avers in regard to  that "Petitioner's Marks which consist of the letter K and the Hebrew letter "kof" are referred to in spoken language as "Kof K".
3. The relevant public to whom the mark of Registration No. 388305912 would be of commercial awareness and significance in commerce, are consumers whose purchasing decision would be

swayed by the appearance of a kosher certification symbol on or in connection with the goods for which it is registered, and who would recognize  the design element of the Mark to be what Petitioner/Counter-Respondent states to be the Hebrew letter “kof”, and who would recognize the letter K within the Mark, and who would “refer to”  “in spoken language as “Kof K”” .

4. As pleaded by Petitioner/Counter-Respondent, the relevant public is then both Hebrew literate and English literate, at least to the extent of knowing  and K, and knowing how to speak the names of those letters .
5. The principal category or genus of goods toward which the Registration may apply is “Food” which would also meet the certification standards for which the mark may apply: Namely, “KOSHER” food within Class A.
6. A lone letter K appearing within the Mark, or appearing in any mark, or appearing in any kosher certification symbol K [and any design], used on or in connection with kosher food within Class A is immediately understood by the relevant public to refer to (a) the genus of goods comprised of kosher food within Class A, or alternatively (b) to a key characteristic of the entire genus of goods comprised of kosher food within Class A, namely its kosher quality.
7. The facts alleged within immediately foregoing paragraph existed even prior to the date Petitioner/Counter-Respondent asserts use and registration of the Mark.
8.  appearing within the Mark, or appearing within any mark, or appearing within any kosher certification symbol, used on or in connection with kosher food within Class A is immediately understood by the relevant public to refer to (a) the genus of goods comprised of **כשר**, meaning kosher food in Hebrew, within Class A , or alternatively (b) to a key characteristic of the entire genus of goods comprised of Kosher food within Class A, namely its **כשר**, meaning kosher, quality.

9. The facts alleged within the immediately foregoing paragraph existed even prior to the date Petitioner/Counter-Respondent asserts use and registration of the Mark.
10. Alternatively: כ is the Hebrew equivalent of K, So that the relevant public upon encountering כ appearing within the Mark, or appearing within any mark, or appearing within any kosher certification symbol, used on or in connection with kosher food within Class A, would immediately stop and translate כ to mean K, which would in turn be immediately understood by the relevant public to refer to (a) the genus of goods comprised of kosher food within Class A, or alternatively (b) to a key characteristic of the entire genus of goods comprised of kosher food, namely its kosher quality.
11. The facts alleged within immediately foregoing paragraph existed even prior to the date Petitioner/Counter-Respondent asserts use and registration of the Mark.
12. The Mark as a whole is generic and incapable of distinguishing the certification standards specified for the Mark.
13. The Mark cannot take on any secondary meaning or acquired distinctiveness.
14. כ given by Petitioner/Counter-Respondent to be a Hebrew letter which Petitioner/Counter-Respondent calls "kof", is the first letter of and an abbreviation of the word כשר meaning KOSHER in the word's original Hebrew. Hebrew is read from right to left.
15. To information and belief, כ, the design appearing within the Mark, is not invented by or otherwise distinctively associated with Petitioner/Counter-Respondent or any owner of the Mark. That design is rather the typeface or font which prior and subsequent to 1971 appeared in Hebrew alphabet charts and in printed material published in Hebrew, and in printed material published in Yiddish, for the Hebrew letter Petitioner/Counter-Respondent calls kof.
16. The typeface or font for כ showing in the Registration is not distinct or original, and was in use by public domain prior to ever being used by the original owner of the Registration. And is still in use within Hebrew printed material and publications.

17. כ , Exhibited here as כ , as typed using f key on the computer Hebrew keyboard setting in bold Times New Roman font, is the eleventh letter of the Hebrew alphabet.
18. כ when it would appear as part of a certification mark used on or in connection with kosher “Food” covered by the Registration would be immediately perceived by the relevant public to be an abbreviation of, or to otherwise denote, the word כשר meaning KOSHER.
19. USPTO registrations and applications for trademarks in which the Hebrew letter Petitioner/Counter-Respondent calls kof appears within the word כשר, with those marks appearing on goods sold within United States, or in connection with services commercially provided within United States, translate כ to be the first letter in the Hebrew word כשר meaning KOSHER. Specific examples include U.S. registration Nos. 4750368 (a kosher certification symbol disclaiming כשר ), 3131894, 3192909, 2859066, 4235504, 4239474, 3789409, and Application Serial No. 86734701, and the marks showing within the Administrative Response dated November 10, 2015 of the pleaded Application record (for the other mark of serial No 86713509 which Petitioner/Counter-Respondent pleads within the petition).
20. Third party USPTO registrations of kosher symbol certification marks in which the Hebrew letter Petitioner/Counter-Respondent calls kof appears within the word כשר, and which is in use on goods offered for sale within United states, disclaim the Hebrew letter Petitioner/Counter-Respondent calls Kof as well as the remaining Hebrew letters of the word כשר. Specific examples include live U.S. registration Nos. 4750368, 1744994, 3192909, and 3131894. (Additionally, Serial No. 74559445, and 74559148, which are listed as “dead”).

21. As defined by authoritative references such as dictionary and encyclopedia, כ is the Hebrew equivalent of English letter K. A specific example includes the reference available via internet at <http://tsdr.uspto.gov/documentviewer?caseId=sn86713509&docId=RFA20150806073601#docIndex=6&page=91> showing within the Administrative Response dated Nov 10, 2015 of the pleaded Application record, and the webpage showing at url <https://en.wikipedia.org/wiki/Kaph> and archived at webpage showing at url <https://web.archive.org/web/20160502181259/https://en.wikipedia.org/wiki/Kaph> .
22. As translated or transliterated within USPTO registrations for trademarks consisting of כ as an element for marks used within United States, כ is the Hebrew equivalent of K in English. Specific examples include U.S. registration No. 1719226 and 1744994.
23. To information and belief, Petitioner/Counter-Respondent did not invent the letter K within the Mark K [and design]. The K as it appears within the registration is not of any stylization or proprietary font.
24. K is dictionary defined to be an abbreviation of “Kosher -often enclosed in a circle”. A specific example is the definition given by the online dictionary accessible at url <http://www.merriam-webster.com/dictionary/k> and archived at url <https://web.archive.org/web/20140120102524/http://www.merriam-webster.com/dictionary/k> , and a similar definition of K appearing within the Administrative response dated November 10, 2015 of the pleaded Application record.
25. K is also used on goods sold in United States as a universal symbol of Kosher certification, without K indicating whose or which standard is specified. Specific examples appear showing within the Administrative Response dated Nov 10, 2015 of the pleaded Application record.
26. K as used in a certification mark appearing on goods in class A is a generic indication of KOSHER. This has been so even prior to when Petitioner/Counter-Respondent asserts it used and registered the Mark.

27. To information and belief as showing on USPTO on-line records of U.S. registered trademarks, K was used as an element in third party marks certifying food as kosher prior to when Petitioner/Counter-Respondent asserts to have first used the Mark. Specific examples include U.S. Registration Nos. 0795748, 2094030, 0987134.
28. To information and belief, K was and is in use by the Public Domain as indicating KOSHER, prior to when Petitioner/Counter-Respondent asserts it began use of K, And prior to when U.S. Congress legislated any Acts regulating Commerce.
29. To information and belief,  was and is in use by the Public Domain as indicating KOSHER, prior to when Petitioner/Counter-Respondent asserts it began use of , And prior to when U.S. Congress legislated any Acts regulating Commerce.
30. To information as gathered from what is shown on USPTO on line records, well over a dozen third party U.S. Trademark registrations and applications of K [and design] for kosher certification symbols used in U.S. covering goods in Class A, disclaim use of K. -Specific examples include live U.S. Registration Nos: 4487589, 4349241, 4366777, 4220980, 4174902, 4160214 , 3110495, 3703065, 3342913, 3591656, 2477561, 1707049, 1436924, 1424439, (all kosher symbol certification marks), And live Application Serial Nos: 86841344, 86282330, and additional marks (2692212, 74137060, 73742309, 73461212, 86108394 listed as "dead") (Registration Nos: 1801728, 1803526, 1802466, 1429663, 1378633, 1353418, 86282330, kosher certification marks listed as cancelled or dead, and 1140560 for kosher restaurant services listed as dead), and additional marks showing within the Administrative responses dated November 10, 2015 of the Application record.
31. To information gathered from USPTO online records, U.S. registration No. 4751543, for a kosher inspection servicemark disclaims use of K.
32. To information gathered from USPTO on[line records, Third party U.S. registrations of trademarks for kosher goods sold within United States disclaim use of K. Specific examples include Registration Nos: 3664746, and additional marks showing within the Administrative responses dated November 10,

2015 of the pleaded Application record (for the other mark pleaded by Petitioner/Counter-Respondent).

33. To information and belief, and as further gathered from USPTO Office actions by examining attorneys, Goods offered for sale within United States use a K on the packaging and/or label to generically indicate the goods are Kosher, without the K indicating who or which standard is represented by the K. Specific examples include Tabasco<sup>®</sup> brand pepper sauce, Schwepps<sup>®</sup> brand canned seltzer, Martin's<sup>®</sup> brand carob powder, Taster's Choice<sup>®</sup> brand instant coffee, and A-1<sup>®</sup> brand steak sauce, and additional marks showing within the Administrative responses dated November 10, 2015 of the pleaded Application record (for the other mark pleaded by Petitioner/Counter-Respondent).

34. As shows at USPTO records, Harvey Senter doing business as Kosher Supervision Service, formerly owned U.S. Registration No. 0923670, Registration date November 9, 1971, for the certification wordmark K, , Other Data: THE MARK CERTIFIES THE KOSHER QUALITY OF FOOD, then later abandoned use of the mark and allowed the registration to be cancelled as of January 3, 1978.

35. It is self-evident from the marks themselves that Harvey Senter and others before and after him who chose to design their kosher symbols using letter K rather than any other English letter, did so with an apparent precise intent that K would be interpreted by the relevant public to indicate KOSHER.

36. Similarly to foregoing paragraph, when Harvey Senter abandoned use of  to instead use  which includes a Hebrew letter  in addition to a K, he chose to use Hebrew letter  rather than any other Hebrew letter, with an apparent precise intent that  would be interpreted by the relevant public to indicate **כשר** meaning KOSHER in Hebrew.

37. To information and belief based on the website content itself, Petitioner/Counter-Respondent owns the url internet address [www.kof-k.org](http://www.kof-k.org), And owns and controls the webpages showing there and linked by it through the internet including <http://www.kof-k.cn/> as well as webpages which have shown there as accessed by <http://kof-kchina.com/>
38. To information and belief, Snapshots of Petitioner's/Counter-Respondent's web postings have been archived numerous times over the years by "The Wayback Machine" accessible through the internet by using url addresses including [https://web.archive.org/web/\\*/kof-k.org](https://web.archive.org/web/*/kof-k.org) and [https://web.archive.org/web/\\*/http://kof-kchina.com/](https://web.archive.org/web/*/http://kof-kchina.com/) and [https://web.archive.org/web/\\*/http://www.kof-k.cn/](https://web.archive.org/web/*/http://www.kof-k.cn/) as a portal to access past versions of Petitioner's/Counter-Respondent's websites.
39. Petitioner's/Counter-Respondent's websites archived since as early as June 5 2102 at <https://web.archive.org/web/20120605103212/http://www.kof-kchina.com/> (tab 4), and Oct 29, 2012 at <https://web.archive.org/web/20121029044737/http://www.kof-kchina.com/> (tab 3) , and going to at least as late as April 10, 2106 <https://web.archive.org/web/20160410190001/http://kof-kchina.com/> (tab3) have displayed a graphic equation " [Hebrew letter Petitioner calls kof] = KOF = K = KOSHER". That website also posts a graphic denotation of the mark pleaded by Petitioner/Counter-Respondent referring to it as "The symbol that means Kosher". And a byline in regard to its design element as: "The Hebrew letter for the word that means Kosher".
40. As of the date of this Counterclaim, Petitioner's/Counter-Respondent's website accessible at url <http://www.kof-k.cn/> still shows that webpage as described in previous paragraph.
41. Both the K and the Hebrew letter Petitioner/Counter-Respondent calls kof, are not altered in their meaning, sound, appearance, commercial impression, or association by appearing as displayed within the Registration. To the contrary, these non-distinctive and generic interpretations of K and כ mentioned in foregoing paragraphs would be reinforced by the combined presence of both these letters. A leap of cognition and imagination would be required to interpret the elements of the Mark as indicating anything other than KOSHER.

42. The positioning of K in the Mark to be within the space of the design element which Petitioner/Counter-Respondent calls kof is merely a most economical use of the space the mark appears on, adding no distinctiveness or secondary meaning.

43. On the alternative that the relevant public would include the population who does not know the name or translation of כ, the Hebrew letter which Petitioner/Counter-Respondent calls kof, the Hebrew letter כ appearing within the Mark, or appearing within any mark, or appearing within any kosher certification symbol, used on or in connection with kosher food within Class A is immediately understood by that portion of the relevant public to refer to (a) the genus of goods comprised of kosher, or Hebrew dietary law compliant food, within Class A, or alternatively (b) to a key characteristic of the entire genus of goods comprised of Kosher food within Class A, namely its quality of being Kosher or compliant with Hebrew religion dietary law, or (c) as simply functioning to note the international nature of the market in which the goods are sold which would include Israel.

44. On the alternative that the relevant public would include the population who would not recognize כ as a Hebrew letter at all, (a) the כ is of no distinctiveness as a mere incomplete border which cannot acquire any distinctiveness or secondary meaning. Or Alternatively (b) if the כ were to become of commercial relevance to anyone among anyone that portion of the population, that person would by then also be informed that כ is “The Hebrew letter for the word that means Kosher”.

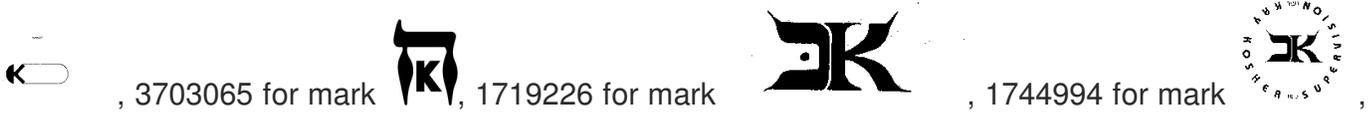
45. Petitioner/Counter-Respondent is not the exclusive user of a USPTO registered kosher certification mark still in use and which consists of K [and design], for which the design is a Hebrew letter or the Hebrew letter Petitioner/Counter-Respondent calls kof or a stylization of the Hebrew letter Petitioner/Counter-Respondent calls kof. A specific example of a mark using a stylization of כ is



which to information and belief, is listed at USPTO TSDR website with data showing as

"Registration Number 1719226 LIVE. Registration Date September 22, 1992. Owner (REGISTRANT) Shapiro, Solomon. Goods and Services IC A . US A . G & S: food. FIRST USE: 19890913. FIRST USE IN COMMERCE: 19890913. Translations The caph is a Hebrew letter pronounced as "K" ". And which is still in use in commerce within United States.

46. Additional examples may include Registration Nos. 0987134 for mark , 73432115 for mark



, 3703065 for mark , 1719226 for mark , 1744994 for mark ,

4599836 for mark , and 1293538 for mark .

47. The Mark as registered using a standard non-stylized  is incapable of distinguishing any specific certification standards which may have been specified by Petitioner/Counter-Respondent.

48. The Mark cannot become distinctive, or acquire a secondary meaning.

49. Based on the foregoing, Kosher Supervision Service, Inc.'s Registration No. 927067 is invalid and subject to cancellation on grounds that the Mark is generic or has become generic to the goods it appears on, And is generic or has become generic for the key characteristic of KOSHER which it attest to.

50. To information and belief, Individuals to whom I am privy have been using K to indicate Kosher food or the kosher quality of food prior to when Kosher Supervision Service, Inc. or their own predecessor(s) have been using K. at least to the extent that K is part of, or an abbreviation of the word Kosher.

51. To information and belief, Individuals to whom I am privy have been using כ to indicate כשר meaning Kosher food, or the כשר meaning kosher quality of food, prior to when Kosher Supervision Service, Inc. or their own predecessor(s) have been using כ at least to the extent that כ is part of, or an abbreviation the word כשר meaning Kosher.

52. U.S. Registration No: 927067 is registered to cover food as certifying the kosher quality of the food within Class A that it appears on or in connection with.
53. Alternatively; the Mark of registration No. 927067 is a kosher certification symbol consisting of K [and design] for which the design is .
54. Therefore, the Mark as registered by U.S. Registration No. 927067 is generic with respect to (a) the entire genus of food within Class A for which the Mark is registered to be used with. or alternatively (b) to a key characteristic of the genus of goods comprised of kosher food, namely its kosher quality.
55. I therefore may plead as a defense that my mark can pose no dilution to the Mark, And that my mark can pose no likelihood of confusion in regard to any purported similarities between the marks because generic elements are already diluted in the ultimate, and generic similarities are of no consequence.
56. Additionally, based on the foregoing, Kosher Supervision Service, Inc.'s Registration No. 927067 is invalid and subject to cancellation.
57. Alternatively: The registration which awards broad rights to  as a word mark K is invalid and subject to cancellation. The Registration must at least be required to disclaim K and any non-Latin elements.

## COUNT TWO: USURPATION OF ENGLISH AND HEBREW LANGUAGE

58. I repeat all of the previously stated paragraphs as if stated here.
59. By statutes which include 15 U.S.C. §1052(e) (5), the Mark should not continue to be registered, because a continued registration would usurp from the Public Domain, fair use of English language, and fair use of Hebrew language, which existed prior to Petitioner/Counter-Respondent ever using the Mark.
60. Specifically: The Hebrew letter given by the Application to be “kof”, must remain available for use to communicate to Hebrew literate relevant public that food bearing a  is כֹּפֶר. And K must remain

available for use to communicate to English literate relevant public that food bearing a K is KOSHER. And combinations of K and כ must remain available for use to simultaneously communicate to both the Hebrew literate, and to the English literate, among the relevant public that food bearing a combination of כ and K is כשר meaning KOSHER.

### COUNT THREE: ABANDONEMENT

61. I repeat here all foregoing paragraphs as if stated here.

62. To information and belief as gathered from evidence and investigation, For a consecutive period of at least 3 years and a day prior to July 31 2009, the date at which I applied to Register my mark at USPTO, and onward for more than at least another 3 years and a day: the Mark  was no longer used in commerce by Petitioner/Counter-Respondent as a certification trademark.

63. Neither was the Mark  used during that same time period, mentioned in immediately foregoing paragraph, as a trademark on or in connection with goods offered for sale in The United States as indicating these goods are certified by Petitioner/Counter-Respondent, nor to the standards specified by Petitioner/Counter-Respondent within the file for U.S. Registration No. 927067.

64. To information and belief, and as is shown by the specimens of record at USPTO within the Application file for , and by the many subsequent specimens of record for renewals of the Registration, and as is shown within the specimens of record for Serial No. 86/713509 ("the Application"), since 1972 not a single specimen is shown to be a mark appearing as . Use of the Mark was replaced by use of later marks which are readily discernible as different than . The Mark  was out of use and abandoned very soon after, if not prior to, the date of its registration and onward, for a consecutive period of at least three years.

Behavioral Pattern of Abandonment:

65. To information as showing at USPTO online records, Harvey Senter is the Mark's original owner of record.

66. To information as shown at USPTO online records, on or around July 1970 prior to using the Mark  , Harvey Senter used and owned another certification mark  for kosher, registered as a wordmark K: Registration No. 9273670 Registration date Nov 09 1971 FIRST USE IN COMMERCE: 1970, 07, 00.

67. To information as shown at USPTO online records, After only 10 months later, on April 1 1971, Harvey Senter then switched from using mark  Registration No. 9273670 to concurrently or instead use  and have it registered as Registration No 927067, also as a wordmark K. Registration date January 11, 1972. FIRST USE: 19710401. FIRST USE IN COMMERCE: 19710401

68. Petitioner/Counter-Respondent in paragraph 11 of the petition asserts that  , the mark of the pleaded Application, Serial No. 86/713509 is stated to be of first use in 1972.

69. To information as gathered from search results of Government Public record of Corporations for State of New Jersey, Petitioner/Counter-Petitioner did not exist as a corporation at any date prior to 1986. The original owner of  from prior to 1986 cannot be Petitioner/Counter-Petitioner but rather must be someone else.

70. On the Alternative that Harvey Senter was the original owner and user of  in 1972, then in 1972 less than twenty one months later, he once again switched marks to use a third mark  instead of  , which itself was a recent replacement of  .

71. To information and belief and as gathered by the specimen records showing for Registration No 927067, and as gathered by other sources, there were even more intermediary marks, further

separating a continuance in use between  and  , which have also been abandoned by Harvey Senter and/or Petitioner/Counter-Respondent.

72. On the alternative that Harvey Senter is not the original owner of  , he has still abandoned use of the Mark  for a consecutive period of at least three years with the apparent intention of not using  anymore, to instead use other marks some of which show within the specimens of record for the Mark.

73. As the USPTO TSDR online records show, Harvey Senter later allowed the Registration 9273670 for  to lapse by not filing any renewal for that mark.

74. It is apparent that when the then owner of the Mark  , ceased to use the  in 1972 or soon afterward, this was done with the intention of no longer using the Mark, and for the purpose of instead using one or more other marks showing within the specimens of record. The apparent intention in abandoning use of the Mark is that it is generic and of no distinctiveness. The Mark's owner intended to replace use of the mark with other marks which utilize a degree of stylization in an apparent attempt to remedy the defects inherent to the Mark  .

75. Alternatively: To information and belief, the Mark's then owner was at the time a follower of a great rabbi who frowned upon use of sacred Hebrew alphabet on disposable food packaging. The intent in the Mark's then owner in abandoning use of the Mark would be apparent as motivated by avoiding use of sacred letter forms on packaging which would be disposed of in a disgraceful manner.

76. On the alternative that Petitioner/Counter-Respondent Kosher Supervision Service, Inc. was assigned ownership of the Mark  , it also has never used the Mark  for a consecutive period of at least three years and a day, commencing with the date of the conveyance taking effect . Neither has Harvey Senter used the Mark during that period.

77. On the alternative that Kosher Supervision Services Inc. [s instead of comma] was assigned ownership of the Mark  as a first Assignee, The first Assignee did not ever use the Mark for a

consecutive period of at least three years and a day, commencing with the date of the conveyance taking effect in December 2, 2003 .

78. To information and belief as gathered by the circumstances of Motion practice for these proceedings, and as gathered from portal search results of Public Government records of Corporations for State of New Jersey, the first Assignee is not a corporation, and is not a juristic person, and is not the same entity as Petitioner/Counter-Respondent Kosher Supervision Service, Inc.

79. On the alternative that Harvey Senter would have again executed another assignment of the mark to Petitioner/Counter-Respondent in November 2015, the fact still remains that for the entire period going from the date of the first Assignment up to the date of the execution of the second Assignment nobody was using and exercising control of the mark as a then current owner.

#### Subsequent Marks are not a continuance

80. On the Alternative that the Mark was originally used, and on the alternative that later marks were used:

The marks later used by Harvey Senter or by any of his successors in title are not a continuance of the Mark .

81. Petitioner/Counter-Respondent (paragraphs 5 and 11 of the Petitions), asserts that the mark , was first used in 1972, but not as far back as 1971 when the mark  was asserted to be first used. By Petitioner's/ Counter-Respondent's pleading, use of  is not a continuance of use of .

82.  The design element of the pleaded Application, whose form includes four thin mostly straight sideways lines with the top two being skewed and slanted, differs from  the design element of the pleaded Registration whose form includes two thick sideways lines which are for the most part parallel and horizontal, whose upper sideways line is wavy, and whose vertical connecting segment is more slanted.

83. To information as gathered by the USPTO TSDR on-line records of documents, the certification standards given for  are not those which could have been given for .

84. Alternatively: Given the non-distinctive nature of elements K and Hebrew letter Petitioner/ Counter-Respondent calls kof within a Kosher certification mark, a continuance in use of the Mark  of the pleaded Registration would be very limited to uses of an identical mark and would not carry over to include use of , or to use of other intermediate unregistered marks showing in the specimen record which may have been used and since abandoned by Petitioner/Counter-Respondent.

85. As the specimen records also indicate, the Mark was no longer in use and abandoned by its owner for other marks, even as early as prior to the mark's registration. And that the mark has been abandoned for decades.

86. To information and belief, and as indicated by the dated specimen showing at Administrative response dated Nov 10, 2015 of the pleaded Application record, the mark  had not yet been used in commerce on goods certified by petitioner at least as late as the Passover season of year 2010.

87. On the alternative that  was in use since 2012, The use and application to register by Petitioner Counter-Respondent of this most recently used mark has replaced the use of all marks which may have been previously used by Petitioner, so that all previous marks are abandoned.

88. In consideration of all of the above, and Pursuant to statutes which include 15 USC §1064(3) , Section 14(3) of the trademark Act, Petitioner has lost ownership of Registration No. for the Mark , K [and design]. The Mark's Registration must be cancelled.

COUNT FOUR: FRAUDULENT MISREPRESENTATION WITHIN THESE PROCEEDINGS AS BEING A JURISTIC PERSON WHO MAY PETITION, PLEAD THE REGISTRATION, AND MOTION

89. Petitioner/Counter-Respondent (in paragraph 1 of the initial petition), in a statement dated and signed August 7 2015, fraudulently misrepresents itself as being the owner of record of the pleaded registration at the time: Namely, a corporation spelled "Kosher Supervision Services Inc." [spelled in plural and without comma].
90. Petitioner/Counter-Respondent, in same aforementioned statement dated and signed August 7, 2015, also misrepresented Kosher Supervision Services Inc. as being a corporation or otherwise juristic person who may petition and be represented as a petitioner within these proceedings.
91. As is evident from search results of Public Government records of corporations for the State of New Jersey, there is no such corporation spelled Kosher Supervision Services Inc., And Kosher Supervision Services Inc. is not the same entity as Petitioner/Counter-Respondent, Kosher Supervision Service, Inc. .
92. The apparent intent of Petitioner's/Counter-Respondent's falsely misrepresenting itself as Kosher Supervision Services Inc., and in falsely misrepresenting Kosher Supervision Services Inc. as a corporation and juristic person, was that there wasn't enough time to have the name changed within the pleaded registration for Petitioner/Counter-Respondent to petition in its own name as owner of the pleaded registration, before the statute of limitations given by Section 14(1) of the trademark Act, 15 U.S.C. §1064(1), precluding the grounds for which the petition is based would set in on August 11, 2015. And that the original owner of record, did not join as a petitioner.
93. Petitioner/Counter-respondent did not file and record any execution of an assignment from the Mark's original owner at any date prior to August 11, 2015, which is Five years and a day after the date of Registration of my mark. Petitioner/Counter-Respondent could not have done so because to information gathered from the USPTO Assignment records, the original owner of record did not yet execute any transaction which would convey ownership to Petitioner/Counter-Respondent. Petitioner/Counter-Respondent did not have real interest in the Mark or its Registration in time to sue.
94. Petitioner/Counter-Respondent in an apparent attempt to deceive the Trademark Trials and Appeals Board of the United States Patent and Trademark Office ("The Board") into believing that

Petitioner/Counter-Respondent did have real interest ownership in the pleaded Registration, falsely misrepresented Kosher Supervision Services Inc. as a corporation, and as the same entity as Petitioner/Counter-Respondent so that The Board will not reject a petition filed or amended subsequent to an assignment being executed after August 10, 2015, as untimely.

95. To information provided to me by Ms. Hind of the TTAB, and as was later noted by The Board in footnote 1 page 5 of Order dated March 30, 2015, Petitioner/Counter-Respondent on August 7, 2015, went so far as to pay two fees, in further misrepresentation that Kosher Supervision Services Inc., as a corporation, and as a second Petitioner other than Petitioner/Counter-Respondent Kosher Supervision Service, Inc. , was petitioning against my mark as the then owner of record of the pleaded registration.
96. From the context of Order dated March 30, 2015 granting amendment of the petition, and from the note in the Board Order, “The Board can only assume that a filing fee for two petitioners was filed because the corrective assignment of the pleaded registration had not yet been recorded with the Office at the time the petition for cancellation was filed”, it is evident that Petitioner/Counter-Respondent succeeded in misleading the Board into believing that the petition was timely filed by a petitioner who had real interest in the registration at the time the initial petition was filed, And that Kosher Supervision Services is a corporation or juristic person
97. In December 12, 2015 Motion to Amend the Pleadings, signed by Mr. Frisca on behalf of Petitioner/Counter-Respondent, Mr. Frisca likewise writes “Kosher Supervision Service, Inc. and Kosher Supervision Services Inc. submit this motion” in further misrepresentation that Kosher Supervision Services Inc. is a juristic person whom he was representing within these proceedings. Mr. Friscia further writes in that motion/brief that “Kosher Supervision Service, Inc. and Kosher Supervision Services Inc. are the same entity”.
98. In its brief in Opposition to Motion for sanctions, dated and signed December 30, 2105, Petitioner/Counter-Respondent, via its counsel Michael Friscia declared and signed “*All of the statements made by me herein are true, and were made with the knowledge that willful false statements*”

*and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration”.*

99. Included within the declaration dated and signed December 30, 2105 referred to in immediately foregoing paragraph, on page 2 paragraph 4 of the declaration, is Mr. Friscia’s statement “*Kosher Supervision Services Inc. was listed as a petitioner on the Petition because at the time the Petition was filed, Kosher Supervision Services Inc. was the owner name listed on U.S. Registration No. 927,067, despite the typographical error in this name.*”, in which Petitioner/Counter-Respondent continues to refer to Kosher Supervision Services Inc. as if it were a corporation and juristic person who may be listed as a petitioner.

100. Mr. Friscia also intentionally mischaracterizes the name Kosher Supervision Services within the petition as a “typographical error” even though it is apparent that the name was typed exactly as it was intended to be typed. And Mr. Friscia refers to the second Assignment executed on November 6, 2105 as corrective rather than new. Both these false or misleading representations are in apparent intent to portray the November 6 conveyance for 10 Dollars as corrective rather than new, and as relating back to the first conveyance executed on December 2 2003 for 1 Dollar, rather than being a new and later conveyance transaction which was executed subsequent to the date that the Assignee had lost the right to sue or petition against my mark on the grounds pleaded within the petition. Mr. Friscia’s apparent intent in this misrepresentation was as a necessary means toward portraying Harvey Senter as having been able to Assign the rights to sue against my mark’s registration on November 6 2015, even though Harvey Senter had already lost those rights as of August 11 2015 by not joining as a petitioner.

101. To the extent that Petitioner’s/Counter-Respondent’s signed via its attorney on August 7, 2015 to the truth of the averments contained within the petition, And To the extent that Petitioner’s/Counter-Respondent’s signed on December 30, 2015 to the truth of the statements of the declaration, And to the extent that Petitioner/Counter-Respondent misrepresented Kosher Supervision Services Inc. as being a corporation and juristic person, And to the extent that Petitioner/Counter-Respondent

knowingly misrepresented the facts, And to the extent that the declaration dated December 30 2105 contained false statements and the like, And to the extent that there was an apparent intent to mislead or deceive the United States Patent and Trademark Office, And to the extent that these misrepresentations were material in that they were used as essential allegations within the Pleading, Petitioner/Counter-Respondent has committed fraud to a sufficient degree that the Registration it pleads based on that declaration should be cancelled.

102. By statutes including those as interpreted In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009), the Mark should not be allowed continued registration.

COUNT FIVE: FRAUDULENT MISREPRESENTATION WITHIN THESE PROCEEDINGS AS BEING THE ORIGINAL OWNER OF THE PLEADED APPLICATION AND ITS MARK

103. I repeat all foregoing paragraphs as if stated here.

104. In its brief in Opposition to Motion for sanctions, dated December 30, 2105, Petitioner/Counter-Respondent, via its counsel Michael Friscia signed *"All of the statements made by me herein are true, and were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration"*.

105. Included within the declaration of immediately foregoing paragraph, on page 2 paragraph 4 of the declaration, is Mr. Friscia's statement "Kosher Supervision Service, Inc. was listed as a petitioner on the Petition because Kosher Supervision Service, Inc. was and continues to be the owner of U.S. Application No. 86/713,509.", in which Petitioner/Counter-Respondent represents that Kosher Supervision Service, Inc. is the owner of the Application which itself is based on a representation that Kosher Supervision Service, Inc. is the owner of the pleaded mark of that Application since 1972.

106. To information and belief as gathered from a search of Public Government records of Corporations for State of New Jersey, Kosher Supervision Service, Inc. did not exist at any date prior to 1986 , so that it

could not be the original owner of the mark of the pleaded Application, or any mark whatsoever from 1972 to 1986.

107. To information as gathered from USPTO Assignment records, neither is there any Assignment recorded for the pleaded Application No. 86/713,509 awarding rights in the mark of the application to Petitioner/Counter-Respondent .

108. Based on the Public Government records referred to in immediately foregoing two paragraphs, Petitioner's/Counter-Respondent's representation that Kosher Supervision Service, Inc. was and continues to be the owner of U.S. Application No. 86/713,509 is a false or at least "misleading statement and the like" .

109. Petitioner's/Counter-Respondent's was apprised of the fact that it was never incorporated prior to 1986, and that there is no assignment of record for the mark of the pleaded Application, and that it therefore could not be the true owner of the mark of the pleaded Application, by my reply in support of Motion to Strike, dated 10/15/2015.

110. The apparent intent of Petitioner's/Counter-Respondent's in falsely misrepresenting within its declaration that it owns U.S. Application No. 86/713,509 was to deceive or at least mislead The Board into believing that the mark of Application No. 86/713,509 may be used as a basis to plead the petition.

111. To the extent that Petitioner's/Counter-Respondent's signed on August 7, 2015 to the truth of the averments contained within the petition, And To the extent that Petitioner's/Counter-Respondent's signed on December 30, 2015 to the truth of the statements of the declaration, And to the extent that Petitioner/Counter-Respondent misrepresented Kosher Supervision Services Inc. as being the owner as of the date the petition was filed, of the pleaded Application and its mark, And to the extent that Petitioner/Counter-Respondent knowingly misrepresented the facts, And to the extent that the declaration dated December 30, 2105 contained a false statement and the like, And to the extent that there was an apparent intent to mislead or deceive the United States Patent and Trademark Office, And to the extent that these misrepresentations were material in that they were used as allegations

within the Pleading, Petitioner/Counter-Respondent has committed fraud to a sufficient degree that the Registration it pleads should be cancelled, And the Application it pleads should be refused registration.

112. By statutes including those as interpreted In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009), the Mark should not be allowed continued registration.

COUNT SIX: BREAK IN CHAIN OF TITLE:

113. Petitioner/Counter-Respondent as a corporation, is not Harvey Senter individual, listed as the original owner of U.S. Registration No. 927067 for the Mark.

114. The assignment data records at USPTO record an assignment on February 5 2004 dated as made effective and executed on December 2, 2003 showing that Harvey Senter Individual, conveyed and assigned ownership of the pleaded registration, U.S. Registration No. 927067 to Kosher Supervision Services corporation for a price paid which included "1\$ ".

115. From then on, Harvey Senter no longer owned the mark, And could no longer re-Assign it. The Mark and its registration had already been assigned to another party: namely Kosher Supervision Services [in plural without comma]

116. Petitioner/Counter-respondent (in paragraph 1 of the petition dated Nov 7 2015) pleaded and averred that Kosher Supervision Services is a corporation registered with the State of New Jersey.

117. As far as the assignment record shows, Kosher Supervision Services never assigned nor otherwise relinquished ownership of the registration to anyone else.

118. On the alternative that nowhere in the petition or in any later declaration within these proceedings is it actually averred or declared that Kosher Supervision Services Inc. is the same entity as Kosher Supervision Service, Inc. [in singular and with comma], Kosher Supervision Services Inc. is the not same entity as Kosher Supervision Service, Inc..

119. To information as gathered from search of public Government records of corporations for State of New Jersey, Kosher Supervision Services Inc. is not the same entity as Kosher Supervision Service, Inc. .
120. The Assignor for the second assignment which is on record as recorded on November 12, 2015 and dated as executed on Nov 6 2015, in which Harvey Senter Individual, Assigned the Registration to Kosher Supervision Service, Inc. for a price paid which included "10\$ ", is without sufficient link to the previous owner of record who is Kosher Supervision Services Inc.. Kosher Supervision Services Inc. never re-assigned ownership back to Harvey Senter. And Kosher Supervision Services Inc. never assigned ownership to Petitioner/Counter-Respondent.
121. To information gathered from the record of assignments, Harvey Senter did not declare or record that the first Assignment, which awarded the registration to Kosher Supervision Services Inc., contained any misspellings or typographical errors. He never made any declaration to void or even modify that assignment.
122. This second assignment was rather recorded as a new assignment, without having nullified or voided the first assignment. The "SUBMISSION TYPE" listed on the cover sheet (reel/frame 5667/0312) is on record as "NEW ASSIGNMENT" as opposed to "corrective assignment".
123. Ownership of the registration would perforce remain with the first Assignee of record, Kosher Supervision Services Inc.
124. The owner of record for the Registration, Kosher Supervision Service, Inc. is not the true owner of the Mark.
125. There is also an error on the cover sheet for the Assignment dated as recorded November 11, 2015. The Assignor is recorded as "Senter, d/b/a Kosher Supervision Service, Harvey", which is not the name of the original owner of record for the Registration.
126. By statutes which include Section 1(a) of the Trademark Act, the Mark may not continue to be Registered in the name of Kosher Supervision Service Inc. , And must be cancelled.

COUNT SEVEN: THE REGISTRATION AS FORMULATED IS UNENFORCEABLE

127. The Registration as covering goods listed as “food” without specifying any category of food does not specify any category for which to assert first use against the registration of my mark.

128. For the categories specified within the registration of my mark, my mark is automatically of first use.

COUNT EIGHT: FRAUDULENT DECLARATIONS BY HARVEY SENTER IN APPLYING FOR AND  
RENEWING THE REGISTRATION

129. The Registration lists goods covered as “food” without including or excluding any specific category within food.

130. To information gathered from the on-line records of USPTO, In his declaration, dated April 18, 1971, Harvey Senter declared that : “... all statements made herein of his own knowledge are true, and that all statements made on information and belief are believed to be true”, “and that all willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom” (“The Senter Declaration of 1971”).

131. In paragraph 11 of the petition, Petitioner/Counter-Respondent asserts the Mark was first used in April 1971. In the context of that allegation and the petition as a whole “first used” means not used prior to that. So that the Mark was less than three weeks old at the date of The Senter Declaration of 1971.

132. Based on the extreme implausibility of a three week old symbol being in use on every specific category of “food”, and based on the inherent impossibility of a kosher certification symbol attesting that the food it appears on is in compliance with the kosher dietary laws would be in commercial use on pet food, and based on the inherent unlikelihood that any certification mark in 1971 could be in so widespread use as to cover each and every possible category of food, and based on information and belief which includes no personal recollection that the Mark was ever used to certify a kosher

slaughterhouse, and based on the inherent impossibility that the mark as a kosher symbol was ever used on pork, at the date the Senter Declaration of 1971 was signed, the Mark was not used on all categories of food.

133. Harvey Senter obviously knew his own mark which he was responsible for controlling was not used on every specific category of food. The apparent intent of Harvey Senter and his lawyer not specifying or excluding any category of food was in attempt to mislead the Patent and Trademark Office into granting broad rights and coverage for the Mark even though such broad coverage was undeserved.

134. In his declarations under sections 8 and 15 dated 2/17/77 (“The Senter declaration of 1977”), Harvey Senter declared “...as shown by the records of the Patent and Trademark office; that the mark described therein has been in continuous use in interstate commerce for at least five consecutive years from January 11, 1972, to the present, on or in connection with the certification of kosher food as stated within the registration; that the mark is still in use in such commerce and a specimen showing present use of the mark is attached hereto; ...” [emphasis added, ellipses deleted].

135. To information gathered from the on-line USPTO record, the mark showing on record there as a specimen, is on the label of a brand of bread, and is not the pleaded mark K [and design], but rather K PARVE [and a different design], with the design being noticeably different than the design as shown by the records of the Patent and Trademark office.

136. From the circumstances as evident from the record as a whole, Harvey Senter had already ceased to use the pleaded Mark and had abandoned its use to instead use other marks whose design element had a degree of stylization, and was not using the Mark on every specific category food, yet he declared in 1977 that the Mark was still in use as registered, and that the specimen he sent to the Patent and Trademark Office was of the registered Mark. Looking back on these events from a current perspective, the apparent intent of Harvey Senter in misleading the Patent and Trademark Office into believing the Mark of the registration was still in use, and that the specimen was of the Mark, was so that the Registration would remain in effect and so that he would not need to re-Apply to register the new marks he was using.

137. To information gathered from USPTO on-line records, In his electronically processed Combined Declaration of Use under sections 8 & 9 dated and signed 1/7/02 (“The Senter Declaration of 2002”) page 1 of 6, Harvey Senter misrepresents the Mark as being “Kof-K” rather than K [and design] as registered. And within the filled in button area he declares “The owner is using the mark in commerce on or in connection with all goods and/or services listed in the existing registration.”.
138. Looking back at the circumstances of the past events, in light of Petitioner’s/Counter-Respondent’s overly zealous present assertion of rights for its marks within this petition, the apparent intent of Harvey Senter in misleading the Patent and Trademark Office into believing that the Mark was KOF-K rather than K [and design] was to acquire even more rights in a trademark which he knew he did not own.
139. Looking back at the circumstances of the past events, the apparent intent of Harvey Senter in misleading the Patent and Trademark Office into believing that the Mark was KOF-K and was in use for all categories of food without any specific exception was to acquire even more rights in a trademark which he did not own.
140. By statutes including those as interpreted In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009), the Mark should not be allowed continued registration.

COUNT NINE: THE MARK IS USED ON GOODS WHICH FAIL TO MEET ITS CERTIFICATION  
STANDARD

141. On the alternative that the Mark is in use: I repeat all foregoing paragraphs as if stated here.
142. To information gathered by what shows on USPTO records of data for the pleaded Application, the standards sheet on file for the Application states (on page 2 toward the end of the statement) “Kosher Supervision Service, Inc. will prohibit from using the mark any company that fails to meet the highest standards of Jewish Kosher Law”.

143. To information and belief, and as gathered from Petitioner's/Counter-Respondent's website, Petitioner/Counter-Respondent allows use of the Mark on goods which do not comply with the certification standards specified for the mark.
144. Specifically, as an example: To information as gathered from the website, Petitioner/Counter-Respondent on a glossary linked to its website concedes that the Mark is used on dairy products and other goods not presumed to follow the higher standard which Petitioner/Counter-Respondent calls "cholov yisroel". "Some kosher consumers will only eat, or prefer, dairy products that conform to the higher *cholov yisroel* standard. kosher certifying agencies will provide this certification in addition to standard kosher dairy certification. Products certified as kosher are assumed to be *cholov sham* unless specifically labeled as *cholov yisroel*."
145. That website referred to in previous paragraph is archived at <https://web.archive.org/web/20150805014140/http://www.kof-k.org/AboutUs/KosherGlossary.aspx>
146. Petitioner/Counter-Respondent also writes in aforementioned glossary, "Pas Palter: Bread or pastry that has been baked without the involvement of a rabbi in the baking process. Pas palter is kosher and items will be certified as such without a specific designation. Many kosher consumers prefer *pas Yisroel* products (see: *pas Yisroel*) and kosher certifying agencies will offer it as an additional certification. Products certified as kosher should be assumed as *pas palter* unless specifically marked as *pas Yisroel* on packaging".
147. To information and belief, and as gathered from Petitioner/Counter-Respondent's website showing goods it certifies, Petitioner/Counter-Respondent does certify goods which fail to meet the higher standards which Petitioner/Counter-Respondent terms "cholov Yisroel" and "Pas Yisroel".
148. A registration of the Mark would be contrary to statutes including 15 U.S.C. §1054, and §1064 (5)(A).

COUNT TEN: Petitioner/Counter-Respondent DISCRIMINANTLY REFUSES USE OF THE MARK ON  
GOODS MEETING THE SPECIFIED CERTIFICATION STANDARD

149. In the petition paragraph 6, Petitioner/Counter-Respondent asserts use of the mark on goods of high quality, the implication being that goods not of high quality are discriminantly refused use of the mark even if the goods are kosher.
150. By Statutes which include 15 U.S.C. 1064 §1064(5)(d) the Mark may not continue to be registered and should be cancelled.

COUNT ELEVEN: THE MARK FAILS TO FUNCTION AS A TRADEMARK

151. I repeat all of the foregoing paragraphs as if stated here.
152. All elements of the Mark merely serve to function purposes other than indicating origin:
153. Specifically: The Hebrew letter given by the Application to be “kof” abbreviates the word **כשר** meaning KOSHER in the word’s original Hebrew. K is an abbreviation for KOSHER in English. The function served by the matter comprising the mark is to simultaneously inform both the Hebrew literate and the English literate among the relevant public that goods the mark appears on or in connection with are **כשר** meaning KOSHER.
154. On the alternative that the Mark is still in use: In the record of specimens showing within the Application’s data file, the elements of the Mark as they appear on goods for which the Mark is used appear along with other letters: Specifically, D, P or PARVE, with D as an abbreviation of word DAIRY functioning to indicate DAIRY, P as an abbreviation of word Passover, functioning to indicate Passover, and PARVE functioning to indicate non-Dairy non-meat. In the context of such usages, the perception that the elements of the Mark are abbreviations which merely function for purposes other than indicating origin is reinforced by the juxtaposition of those other elements which likewise merely function purposes other than indicating origin.
155. To information and belief including as gathered from <http://tsdr.uspto.gov/documentviewer?caseId=sn86713509&docId=RFA20150806073601#docIndex=6&page=88>, included in the Administrative response dated Nov 10, 2015 of the Application record, the

kosher certification symbol of third parties appears alongside K and a Hebrew letter Petitioner/Counter-Respondent calls kof, reinforcing an interpretation of K and a Hebrew letter Petitioner/Counter-Respondent calls kof as merely functioning to refer to the accompanying third party kosher symbol.

156. This perception of mere functionality noted in the immediately preceding two paragraphs applies to elements K and the Hebrew letter Petitioner calls kof even in situations where the Mark may appear without additional elements, D, P, PARVE, and even when the Mark does not appear alongside the kosher certification symbol of third parties.

157. The positioning of K within the space of the design element within the Mark, merely functions to make most economical use of the space upon which the Mark appears.

158. The Mark cannot serve as a trademark because all of its elements and even their positioning within the Mark are alternatively either: (a) generic, or (b) functional, and serve no indication as to whose or which standards the Mark certifies.

159. By statutes which include Trademark Act section 14(3), 15 U.S.C. §1064(3), the Mark may not continue to be registered, because the Mark comprises matter that, as a whole, is functional, And has no distinctiveness at all.

160. Alternatively, by statutes which include Trademark Act section 1, 2, 4, and 45; 15 U.S.C. §§1051, 1052, 1054, and 1127, the Mark may not continue to be registered because the Mark fails to function as a trademark.

COUNT TWELVE: THE MARK IS NOT INHERENTLY DISTINCTIVE AND CANNOT ACQUIRE DISTINCTIVENESS

161. I repeat all foregoing paragraphs as if stated here.

162. The Mark is not inherently distinctive, And cannot serve as a trademark, because all of its elements and even their positioning within the Mark are alternatively either: (a) generic, or (b) functional, and serve no indication as to whose or which standards the Mark certifies.

163. The Mark cannot acquire distinctiveness or secondary meaning.

164. By statutes which include Trademark Act section 1, 2, and 45; and section 2(f), the Mark may not continue to be registered.

#### COUNT THIRTEEN: FALSE SUGGESTION OF CONNECTION

165. I repeat all of the foregoing paragraphs as if stated here.

166. The relevant public to whom the Mark would be of commercial awareness and significance in commerce, are also familiar with religion at least to the extent of knowing there is such a thing as kosher.

167. In the Pleading (paragraphs 4 of the petitions), Petitioner/Counter-Respondent avers the Mark “which consist[s] of K and Hebrew letter “kof”, is referred to in spoken language as “Kof K””.

168. Based on Petitioner’s/Counter-Respondent’s averment noted in previous paragraph, the Mark would immediately bring to mind and falsely suggest to a significant population among the relevant public a connection with the religious organization often referred to as the “KofK Congregation” or its beliefs: Specifically due to the practically identical spelling of KofK and Kof K, and due to that organization owning and publishing a website accessed at url address [www.KofK.org](http://www.KofK.org), and due to KofK Congregation and Petitioner/Counter-Respondent both being a perceived as religious organizations.

169. Alternatively: Based on Petitioner/Counter-Respondent’s averment noted in previous paragraph (105) , the Mark would immediately bring to mind and falsely suggest to a significant population among the relevant public a connection with Norfolk Regional Airport, due to similarities and practically identical spelling of KOFK which is the International Air Transport Association airport code designation for Norfolk Regional Airport, and KOF K, which is how Petitioner avers the Mark “is referred to in spoken language”..

170. Based on Petitioner/Counter-Respondent's averments, the Mark may therefore not be registered because Registration of the Mark would be contrary to statutes which include Trademark Act section 2(a), 15 U.S.C. §1052(a).

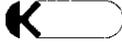
COUNT FOURTEEN: PETITIONER/COUNTER-RESPONDENT ALLOWED THE MARK TO BE  
DILUTED.

171. I repeat all foregoing paragraphs as if stated here.

172. Petitioner/Counter-Respondent has allowed the Mark to be diluted by third party registrations of K [and design] used as certifying kosher.

173. Specifically, since 1971 there are well over a dozen marks Registered and unregistered at USPTO, containing K and/or כ that are used as kosher certification symbols, and/or as kosher inspection service marks, for which Petitioner/Counter-Respondent has neither protested nor Opposed nor petitioned to cancel, including among them Registration Nos. 0987134 for mark ,

73432115 for mark , 3703065 for mark , 1719226 for mark ,

1744994 for mark , 4599836 for mark , and 1293538 for mark .

174. To information gathered from the website itself, there are an estimated hundreds of unauthorized uses of Hebrew letter כ and of English letter K, showing on the archives of Petitioner's/Counter-Respondent's website, And there are additional others not showing there, too numerous to police.

175. Petitioner/Counter-Respondent is not and cannot legitimately exercise control of the Mark. There are simply too many unauthorized uses for Petitioner/Counter-Respondent to police them all.

176. The Mark or previous discontinuous versions of it, appears or has appeared alongside the kosher certification marks of third parties further diluting or blurring the Mark from being interpreted as that of Petitioner/Counter-Respondent. A specific example of this is shown within the Administrative response dated November 10, 2015 of the Application file.

177. A continued registration of the Mark would be contrary to statutes including 15 U.S.C. §1054, and §1064 (5)(A),

COUNT FIFTEEN: PETITIONER/COUNTER-RESPONDENT IS INVOLVED IN PROMOTION OF  
GOODS SOLD UNDER THE MARK

178. I repeat all foregoing paragraphs as if stated here.

179. On the alternative that the Mark is or was in use, Petitioner's/Counter-Respondent's engages or has engaged in the production or marketing of goods or services to which the certification mark is applied.

180. To information and belief as reasonably gathered from the Facebook page itself, Petitioner/Counter-Respondent authors and publishes a Facebook page which is accessible through the internet at <https://www.facebook.com/kofkkosher/>

181. On Petitioner's/Counter-Respondent's Facebook Page, and in additional publications of Petitioner/Counter-Respondent which also appear as accessed by archived versions of Petitioner's/Counter-Respondent's websites, Petitioner/Counter-Respondent promotes or has promoted and even runs or has run commercial advertisements for the goods the Mark appears or has appeared on, these advertisements promoting the goods for qualities other than the Kosher, such as freshness and/or general commercial value.

182. As shown on the website archived at <https://web.archive.org/web/20150418051539/http://www.kofk.org/docs/kofkmaglowres.pdf> , Petitioner's/Counter-Respondent's has published "Food For Thought" magazine.

183. On page 9 of the publication mentioned in immediately foregoing paragraph, Petitioner's/Counter-Respondent's prints a commercial advertisement promoting the commercial value of a brand of soda within their own publication, And on page 16 Petitioner/Counter-Respondent prints a commercial advertisement for a brand frozen dessert.

184. A registration of the Mark would be contrary to statutes including 15 U.S.C. §1054 15 U.S.C. §1064 (5)(B), and to statutes as interpreted by the Courts in regard to Copelands' Enterprises Inc. v. CNV Inc., 945 F.2d 1563, 20 USPQ2d 1295(Fed. Cir. 1991).

COUNT SIXTEEN: Petitioner's/Counter-Respondent's USES THE MARK FOR PURPOSES OTHER  
THAN TO CERTIFY

185. I repeat all foregoing paragraphs as if stated here.

186. To information and belief and as gathered from Petitioner's website, Petitioner permits and has permitted use of the Mark for purposes other than to certify. Specifically, for a period of over 3 consecutive years, Petitioner/Counter-Respondent uses and has used the Mark as a company logo on its website, as a company logo on publications not about Kosher, as a Facebook, icon, as a graphic decoration for its published articles, as a stylized O within the word KOSHER in its webpage advertisement, and for similar purposes other than to certify.

187. A continued registration of the Mark would be contrary to statutes including 15 U.S.C. §1054 15 U.S.C. §1064 (5)(B), and statutes as interpreted by the Courts in regard to Copelands' Enterprises Inc. v. CNV Inc., 945 F.2d 1563, 20 USPQ2d 1295(Fed. Cir. 1991).

188. As specific examples of the allegations contained within the immediately foregoing two paragraphs: As gathered from archives of Petitioner's/Counter-Respondent's website over the years, For a significant period spanning at least from May 10 2000, Petitioner/Counter-Respondent has used the Mark as representing the service it sells as opposed to using the mark for purposes of certification. As a specific example The header, showing on past versions of their websites archived at

<https://web.archive.org/web/20000510140112/http://www.kof-k.org/> and at <https://web.archive.org/web/20001026183958/http://www.kof-k.com/index.shtml> shows the Mark alongside to the left of the words Kof-K Kosher Supervision<sup>®</sup>, with the registered trademark symbol indicating that the registration is for the Kosher supervision service, or for the company, rather than for the certification.

189. To information based on search results of USPTO's TESS website, there is no trademark for any organization "KOF-K KOSHER SUPERVISION", And no such trademark for a kosher supervision service called KOF-K.

190. To information as gathered from what to information and belief are archives of publications which were linked by Petitioner's/Counter-Respondent's website, Petitioner/Counter-Respondent uses the Mark as a company logo in a "Community Announcement" regarding the importance of using smoke alarms published in Petitioner/Counter-Respondent's aforementioned Food for Thought magazine.

191. The website archived at <https://web.archive.org/web/20040212060916/http://www.kof-k.org/index2.html> shows the Mark superimposed by the words "Kosher Supervision", rather than the word "certification".

192. As shown on the website archived at <https://web.archive.org/web/20150418051539/http://www.kof-k.org/docs/kofkmaglowres.pdf>, Petitioner/Counter-Respondent has published Food For Thought magazine.

193. On page 6,7 of that aforementioned issue of Food For Thought magazine, Petitioner/Counter-Respondent used the Mark as an organization logo.

194. On page 11 there is an announcement about public health that has nothing to do with kosher certification. The mark appears there as an organization logo.

195. On page page 25 of the aforementioned Food For Thought magazine, the Mark appears on a [mark] Kof K community advisory about carbon monoxide.

COUNT SEVENTEEN: FRAUDULENT MISREPRESENTATION OF MATTER COMPRISING THE MARK

196. I repeat all foregoing paragraphs as if stated here.
197. Petitioner/Counter-Respondent (in paragraphs 4 of the petitions), bases the cause for its complaint on misleading allegations that the Mark “consist[s] of K and Hebrew letter “kof””. Petitioner/Counter-Respondent/Petitioner uses that allegation as support for further allegations that its “Marks are referred to in spoken language as “Kof K” “.Petitioner/Counter-Respondent signed to the truth of that allegation on August 7, 2015 when submitting the petition.
198. Petitioner’s/Counter-Respondent’s contention that the design within pleaded marks are a kof is contradicted by dictionary and encyclopedia. Kof is rather the Hebrew letter ק . As a party represented by a law firm who has access to dictionaries and encyclopedias and internet, Petitioner/Counter-Respondent is well aware that the Hebrew letter כ is not called kof.
199. The apparent intent of Petitioner/Counter-Respondent in misrepresenting the pronunciation of the Hebrew letter כ is to manufacture grounds upon which to petition against my mark, And to deceive the TTAB of the United States Patent and Trademark Office into believing there are grounds of Likelihood of confusion and dilution.
200. To the extent that Petitioner’s/Counter-Respondent’s signed on August 7, 2015 to the truth of the averments contained within the petition, And to the extent that Petitioner/Counter-Respondent misrepresented that the design element of the Mark is a Hebrew letter KOF rather than giving its correct name, And to the extent that Petitioner/Counter-Respondent knowingly misrepresented the facts, And to the extent that there was an apparent intent to mislead or deceive the United States Patent and Trademark Office, And to the extent that these misrepresentations were material in that they were used as allegations within the Pleading, Petitioner/Counter-Respondent has committed fraud to a sufficient degree that the Registration it pleas as part of the petition should be cancelled.
201. By statutes including those as interpreted In re Bose Corp., 580 F.3d 1240, 91 USPQ2D 1938 (Fed. Cir. 2009), the Mark should not be allowed continued registration.

Wherefore by virtue of all of the above, I respectfully request with all formulations of requesting that the Board deny Kosher Supervision Service Inc.'s petition to cancel registration of my mark K [and design] ,

That the Board allow my mark  , K [and design] U.S. Registration No. 3830599 to continue to maintain its registration. And That the Board grant cancellation of Supervision Service Inc.'s Registration No.927067 for the Mark .

Respectfully submitted,

Dated May 9, 2016

By: Yoel Steinberg

Yoel Steinberg (A.K.A. Yoel Steinberg D/B/A CupK Kosher Supervision)

1823 53rd Street, Brooklyn, NY, 11204

Phone (718) 232-4275

(*pro se*) Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWERS AND COUNTERCLAIMS to Petition 92061981, and accompanying exhibit(s) has been served via Priority mail, postage prepaid, upon Petitioner/Counter-Respondent through Petitioner/Counter-Respondent's counsel MICHAEL R FRISCIA, on May 9, 2016, at the address as reflected in the records of The United States Trademark Office as follows:

MICHAEL R FRISCIA

MCCARTER & ENGLISH, LLP

FOUR GATEWAY CENTER, 100 MULBERRY STREET

NEWARK, NJ 07102-4056 UNITED STATES

Date: May 9, 2016

Joel Steinberg

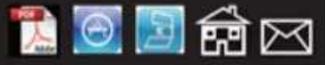
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KOF-K KOSHER 犹太洁食认证中国官方网  
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- KOF-K(好福客)犹太洁食认证流程
- 如何鉴别证书真伪?



THE SYMBOL THAT REPRESENTS KOSHER  
The Hebrew letter, for the word that means kosher

KOF-K的标志代表KOSHER  
希伯来文字母书面含义就是kosher

 = KOF = **K** = KOSHER     KOF — **K** OSHER     **K** OF-K KOSHER

1 2 3 4 5 6 7 8 9



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWERS AND COUNTERCLAIMS to Petition 92061981, and accompanying exhibit(s) has been served via Priority mail, postage prepaid, upon Petitioner/Counter-Respondent through Petitioner/Counter-Respondent's counsel MICHAEL R FRISCIA, on May 9, 2016, at the address as reflected in the records of The United States Trademark Office as follows:

MICHAEL R FRISCIA

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Date: May 9, 2016

*Joel Steinberg*

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