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Filing date: **09/21/2015**

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

Proceeding	92061985
Party	Defendant Brooklyn Bottling Co. of Milton, New York, Inc.
Correspondence Address	BROOKLYN BOTTLING CO OF MILTON NEW YORK INC 1900 LINDEN BLVD, BROOKLYN, NY 11207 UNITED STATES
Submission	Answer
Filer's Name	Panagiota Betty Tufariello
Filer's e-mail	pbtufariello@intellectulaw.com
Signature	/panagiotabettytufariello/
Date	09/21/2015
Attachments	REGISTRANT'S ANSWER TO PETITIONER'S PETITION TO CANCEL.pdf(101288 bytes)

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

----------X
THE CLEARLY FOOD & BEVERAGE COMPANY, INC.

Plaintiff/PETITIONER,

-against-

BROOKLYN BOTTLING CO. OF MILTON, NEW YORK, INC.

Defendant/REGISTRANT/ RESPONDENT.
----------X

Cancellation No. 92061985

In the matter of
Trademark Registration No. 3830605
Registered: August 10, 2010
For the mark **CLEARLY REFRESHING!**

REGISTRANT BROOKLYN BOTTLING CO. OF MILTON, NEW YORK, INC'S ANSWER TO PETITIONER'S PETITION TO CANCEL

Defendant/Registrant/Respondent BROOKLYN BOTTLING CO. OF MILTON, NEW YORK, INC. (hereinafter "Registrant"), by and through its attorneys INTELLECTULAW, LAW OFFICES OF P.B. TUFARIELLO, P.C., hereby answers and responds to Plaintiff/Petitioner THE CLEARLY FOOD & BEVERAGE COMPANY, INC's (hereinafter "Petitioner") Petition to Cancel as follows:

Registrant admits it is the owner of U. S. Trademark Registration No. 3,830,605 and that its address is 1900 Linden Blvd., Brooklyn, NY 11201.

Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the third unnumbered paragraph of Petitioner's Petition to Cancel, and therefore DENIES same.

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of Petitioner's Petition to Cancel, and therefore DENIES same.
2. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of Petitioner's Petition to Cancel, and therefore DENIES same.
3. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of Petitioner's Petition to Cancel, and therefore DENIES same.
4. The allegations contained in Paragraph 4 set forth conclusions of law for which no responsive pleading is required. To the extent that a responsive pleading is required, Registrant DENIES the same.
5. The allegations contained in Paragraph 5 set forth conclusions of law for which no responsive pleading is required. To the extent that a responsive pleading is required, Registrant DENIES the same.
6. The allegations contained in Paragraph 5 set forth conclusions of law for which no responsive pleading is required. To the extent that a responsive pleading is required, Registrant DENIES the same.

AFFIRMATIVE DEFENSES

Further answering the Petition for Cancellation, Registrant pleads the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Registrant's mark does not look the same, does not sound the same and does not convey the same commercial impression as Petitioner's mark.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion between Registrant and Petitioner's marks.

THIRD AFFIRMATIVE DEFENSE

Petitioner's Petition to Cancel fails to state sufficient facts to entitle Petitioner to relief.

FOURTH AFFIRMATIVE DEFENSE

Registrant's mark in its entirety is sufficiently distinctive and different from Petitioner's mark so as to avoid any confusion, deception or mistake as to the source or sponsorship or association as to Registrant's goods.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the Doctrine of Estoppel.

SIXTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the Doctrine of Laches.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred the Doctrine of Waiver.

EIGHT AFFIRMATIVE DEFENSE

Petitioner's mark is Descriptive or Geographically Descriptive.

WHEREFORE, Registrant respectfully requests that:

A. Petitioner takes nothing by its Petition to Cancel;

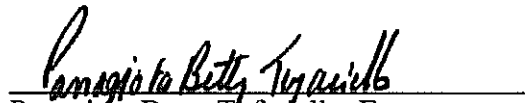
B. Petitioner's Petition to Cancel be dismissed with prejudice; and

C. The Trademark Trial and Appeal Board grant such other and further relief as it deems just and proper.

Respectfully Submitted,

INTELLECTULAW
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 9/21/2015



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Attorneys for Registrant
BROOKLYN BOTTLING CO. OF MILTON,
NEW YORK, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Registrant's Answer to Petitioner's Petition to Cancel, has been filed with the T.T.A.B. via E.S.T.T.A. and served upon the following attorney for the Plaintiff/Petitioner via Certified Mail - Return Receipt Requested:

ROBERT R KHAN, Director
THE CLEARLY FOOD & BEVERAGE COMPANY INC
PO BOX 325
PERRYSBURG, OH 43552
Phone: 646-872-8164
robert@clearlyfab.com,
jennifer.black@clearlyfab.com

on Monday, September 21, 2015

Panagiota Betty Tufariello

Panagiota Betty Tufariello, Esq.