

ESTTA Tracking number: **ESTTA695657**

Filing date: **09/14/2015**

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

Proceeding	92061993
Party	Defendant Alexis Meredith Sparling
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Submission	Answer
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Signature	/Laura A. Levine/
Date	09/14/2015
Attachments	Answer to Petition for Cancellation.pdf(156192 bytes )



1. Registrant admits the allegations in paragraph 1 of the Petition.
2. Registrant is without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore deny them.
3. Registrant is without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 3 and therefore deny them.
4. Registrant is without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 4 and therefore deny them.
5. Registrant is without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 5 and therefore deny them.
6. Registrant denies that the “Tart Marks,” and each of them, are famous as defined by 15 U.S.C. § 1125(c)(1) of the Federal Trademark Dilution Act of 1995. Registrant is otherwise without sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 6 and therefore deny them.
7. Through Swimtarte LLC, Registrant admits that she markets and sells high-end swimwear under the name SWIMTARTE and advertises these goods online through the website [www.swimtarte.com](http://www.swimtarte.com). Registrant denies the remaining allegations in paragraph 7.
8. Paragraph 8 contains legal conclusions to which no response is required. To the extent any response is required, Registrant denies the allegations in paragraph 8 of the Petition.
9. Registrant denies the allegations in paragraph 9.
10. Registrant denies the allegations in paragraph 10.

11. Paragraph 11 contains legal conclusions to which no response is required.<sup>1</sup> To the extent any response is required, Registrant denies the allegations in paragraph 11 of the Complaint. Registrant also denies that the Tart Marks are famous as defined by 15 U.S.C. § 1125(c)(1) of the Federal Trademark Dilution Act of 1995.

### **AFFIRMATIVE DEFENSES**

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Registrant further pleads the following separate and additional defenses. Registrant reserves the right to assert such additional affirmative defenses as discovery progresses.

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(Failure to State a Claim – Alleged Fraud)**

Under Rule 9(b) and the Trademark Rules, Petitioner fails to state a claim upon which relief can be granted as to the alleged fraud basis of cancellation because the Petition fails to allege (and cannot allege) that – *even if* the allegations in Paragraph 10 were true – Registrant acted with scienter to deceive the USPTO.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **(No Actual Confusion or Likelihood of Confusion)**

No actual confusion or likelihood of confusion exists between Petitioner’s alleged Tart Marks and Registrant’s SWIMTARTE mark.

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<sup>1</sup> Notably, in its Petition, Petitioner mislabels this allegation as paragraph “6.” As this is the 11<sup>th</sup> paragraph, Registrant numbers it as such.



**CERTIFICATE OF SERVICE VIA FIRST CLASS MAIL**

I, Bobby Ghajar, hereby certify that a true and complete copy of the foregoing **ANSWER TO PETITION FOR CANCELLATION** was served on Petitioner's counsel, Michael P. Martin, Fischbach, Perlstein, Lieberman & Almond, LLP, 1925 Century Park East, Suite 2050, Los Angeles, CA 90067, via postage prepaid first-class mail on September 14, 2015.

/s/ Bobby Ghajar

Bobby Ghajar