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

Proceeding	92062391
Party	Defendant TruVersaRx, LLC
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Date	12/16/2015
Attachments	Answer_FINAL.pdf(23124 bytes )

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

<b>TRUVERIS, INC., Petitioner,</b>  <b>v.</b>  <b>TRUVERSARX, LLC, Respondent</b>	<b>Cancellation No. 92062391</b>  <b>Registration No. 4605136</b>  <b>Mark: TRUVERSARX</b>
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**ANSWER AND AFFIRMATIVE DEFENSES**

Respondent, TRUVERSARX, LLC, through its undersigned counsel, hereby submits its Answer and Affirmative Defenses to the Petition to Cancel filed by Petitioner, Truveris as follows:

1. Respondent is without knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Petition to Cancel and therefore denies the same.
2. Respondent is without knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Petition to Cancel and therefore denies the same, except it is admitted that Petitioner has filed applications for the two marks identified.
3. The application attached as Exhibit A speaks for itself and therefore no responsive pleading is required; however, to the extent a responsive pleading is required, the allegations are denied.

4. The application attached as Exhibit B speaks for itself and therefore no responsive pleading is required; however, to the extent a responsive pleading is required, the allegations are denied.
5. The application attached as Exhibit C speaks for itself and therefore no responsive pleading is required; however, to the extent a responsive pleading is required, the allegations are denied.
6. The application attached as Exhibit D speaks for itself and therefore no responsive pleading is required; however, to the extent a responsive pleading is required, the allegations are denied.
7. It is denied that Petitioner owns TRUVERIS marks and that Petitioner owns “TRU-related” marks which are valid and subsisting and have not been abandoned; however, it is admitted that Petitioner has sought and obtained registrations for the marks referenced.
8. It is denied that Petitioner owns the mark TRUBID as a valid and subsisting mark which has not been abandoned, on or in connection with the goods and/or services referenced; however, it is admitted that Petitioner has sought and obtained the registration for the mark as referenced in Exhibit E.
9. It is denied that Petitioner owns the mark TRUGUARD as a valid and subsisting mark which has not been abandoned, on or in connection with the goods and/or services referenced; however, it is admitted that Petitioner has sought and obtained the registration for the mark as referenced in Exhibit F.
10. It is denied that Petitioner owns the mark TRUREPORT as a valid and subsisting mark which has not been abandoned, on or in connection with the goods and/or

services referenced; however, it is admitted that Petitioner has sought and obtained the registration for the mark as referenced in Exhibit G.

11. It is denied that Petitioner owns the mark TRURXPAY as a valid and subsisting mark which has not been abandoned, on or in connection with the goods and/or services referenced; however, it is admitted that Petitioner has sought and obtained the registration for the mark as referenced in Exhibit H.

12. The allegations of this paragraph purport to be a summary of paragraphs 1 through 11 above and they are denied, except as admitted in response to paragraphs 1 through 11 above.

13. Denied.

14. Denied.

15. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.

16. Denied.

17. Denied that Petitioner has prior rights; however, it is admitted that Respondent owns a valid and subsisting mark, TRUVERSARX, which has not been abandoned.

18. Admitted.

19. Denied.

20. Respondent is without knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Petition to Cancel and therefore denies the same.

21. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
22. Denied.
23. Denied.
24. Denied that TRUVERIS was used as a trademark or service mark on or in connection with specified goods and services rather than as merely a business name.
25. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
26. Respondent is without knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Petition to Cancel and therefore denies the same; except it is admitted that Respondent is engaged in the business of PBA services among others.
27. Denied, except it is admitted that Respondent sells to non-competitive customers to those of Petitioner under its mark(s) and it is admitted that Exhibit I appears to be a copy of selected pages from Respondent's website.
28. Respondent is without knowledge or information sufficient to form a belief as to the allegations of this paragraph of the Petition to Cancel and therefore denies the same.
29. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.

30. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
31. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
32. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
33. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.
34. The allegations set forth in this paragraph are conclusions of law to which no responsive pleading is required; however, to the extent a responsive pleading is required, they are denied.

#### **AFFIRMATIVE DEFENSES**

1. Petitioner fails to state a claim upon which relief can be granted.
2. Respondent's mark is senior to one or more of Petitioner's marks.
3. Petitioner has not used its business name, Truveris, as a trademark or service mark with prior rights to Respondent.
4. Petitioner has not and will not be damaged by Respondent's mark and therefore lacks standing.

5. Petitioner is barred from seeking cancellation of Registrant's mark under the doctrines of acquiescence, laches, estoppel, waiver and unclean hands.
6. Petitioner has failed to identify Respondent's registration as confusingly similar to the pending trademark applications it filed.
7. Petitioner's mark(s) are not valid and subsisting or have been abandoned.
8. There are many "TRU-related" marks registered and in use in commerce and therefore there is no likelihood of confusion between Respondent's mark and Petitioner's mark(s).
9. Respondent's mark is used in non-competitive market segments compared to market segments used or purportedly used in connection with Petitioner's mark(s) and therefore there is no likelihood of confusion.
10. Respondent's mark is used in connection with sales to non-competitive customers compared to those offered goods and/or services by Petitioner under its mark(s) and therefore there is no likelihood of confusion.
11. Petitioner is not able otherwise to demonstrate a likelihood of confusion between Respondent's mark and Petitioner's mark(s).
12. Respondent reserves the right to assert such other and further defenses as may be revealed through further investigation and/or discovery.

WHEREFORE, Respondent respectfully requests that the Petition to Cancel be dismissed with prejudice, together with such other and further relief as may be determined by the Board.

Respectfully submitted,

Dated: December 16, 2015

LAW OFFICES OF CARLO SCARAMELLA, LLC

By: /s/ Carlo Scaramella, Esq./

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Counsel for Respondent, TRUVERSARX, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Answer and Affirmative Defenses has been served on counsel for Petitioner, Truveris, by mailing said copy on December 16, 2015, via U.S. First Class Mail, postage prepaid and by email to the following:

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Dated: December 16, 2015

LAW OFFICES OF CARLO SCARAMELLA, LLC

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