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

Proceeding	92062599
Party	Defendant (X) Universe, Inc.
Correspondence Address	(X) UNIVERSE INC 114 E MARTIN LUTHER KING JR BLVD PLANT CITY, FL 33565 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Matthew G. McKinney
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Signature	/Matthew G. McKinney/
Date	12/18/2015
Attachments	Motion to Dismiss.pdf(82271 bytes)

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

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)	
MULTEE PROJECT CORP.)	
)	Opposition No.: 92062599
Petitioner,)	Registration No.: 3384437
)	
v.)	
)	
(X) UNIVERSE, INC.)	
)	
Respondent.)	
)	
)	
_____)	

RESPONDENT’S MOTION TO DISMISS

The Respondent, (X) Universe, Inc. (“Respondent”), by and through its undersigned counsel, moves to dismiss Multee Project Corp.’s (“Petitioner”) petition for cancellation and states the following in support thereof:

1. The Petitioner alleges the grounds for the cancellation are that the Respondent has discontinued use of the Mark for “at least three years prior to the filing date of this petition... and without the intention of resuming the same.” See Petition, paragraphs 4-5.
2. However, the Petitioner also alleges that the Respondent has “filed its declaration of use under Section 8 on August 15, 2014.” See Petition, paragraph 7.
3. Accordingly, the Petitioner’s allegations are contradictory in that on the one hand the Petitioner alleges three years of non-use of the Mark with no intent to resume use of the Mark, and on the other hand the Petitioner alleges that a declaration of use for the continued registration of the Mark was filed last year by the Respondent.

4. In other words, the act of the Respondent filing a declaration of use for the Mark demonstrates the intent of the Respondent to use the Mark and contradicts the Petitioner's allegations that the Respondent had no intent to resume use of the Mark even assuming, *arguendo*, three years of non-use of the Mark, which the Respondent denies.

5. Thus, the Petitioner's allegations cannot be accepted as well-pleaded due to the contradiction, and as a result the petition fails to properly allege grounds for abandonment of the Mark and should be dismissed.

For at least all the foregoing reasons, the Respondent requests that the petition for cancellation be dismissed with prejudice.

Dated this 18th day of December 2015.

/Matthew G. McKinney/
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CERTIFICATE OF SERVICE

We certify that a true and correct copy of the forgoing has been furnished by U.S. Mail to Michael MacDermott, Esq., P.O. Box 29001, Glendale, CA 91209-9001; this 18th day of December 2015.

/Matthew G. McKinney/
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