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

Proceeding	92063351
Party	Defendant Birdsong Brewing, LLC
Correspondence Address	MAUREEN T SHANNON SHANNON LAW GROUP PLLC 3987 FORESTER BLVD AUBURN HILLS, MI 48326 UNITED STATES maureentshannon@gmail.com
Submission	Answer
Filer's Name	Joseph A. Bellanca
Filer's e-mail	jbellanca@hertzschram.com
Signature	/Joseph A. Bellanca/
Date	04/26/2016
Attachments	Answer to Petition to Cancel Design .PDF(50112 bytes)

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

In re: Registration of:

Registrant : Birdsong Brewing, LLC
Reg. No. : 4,694,885
Mark : FREE WILL PALE ALE and Design
Registration Date : March 3, 2015

Free Will Brewing Co., LLC, :
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 Petitioner, :
 :
 :
 v. : Cancellation No. 92063351
 :
 :
 Birdsong Brewing, LLC :
 :
 :
 Registrant/Respondent. :

Commissioner for Trademarks
Box TTAB, FEE
P.O. Box 1451
Alexandria, VA 22313-1451

**REGISTRANT’S ANSWER TO PETITIONER’S
PETITION TO CANCEL AND AFFIRMATIVE DEFENSES**

Registrant, Birdsong Brewing, LLC, by and through its undersigned counsel, hereby responds to the Petition to Cancel as follows:

1. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 1 that Petitioner “is a limited liability company with an address of 410 E. Walnut Street, Suite 10, Perkasie, Pennsylvania 18944.” Registrant denies the allegation, as set forth in Paragraph 1, that Petitioner will be damaged by Registration No. 4,694,885 for the mark FREE WILL PALE ALE and Design.

2. Registrant denies the allegations contained in Paragraph 2 of Petitioner’s Petition to Cancel as untrue. By way of further answer, Registrant states that, upon information and

belief, Petitioner did not obtain a permit to brew malt beverages until at least 2012, after Petitioner's alleged date of first use of Free Will Brewing Co. and Registrant's first use of the FREE WILL PALE ALE mark in commerce.

3. Registrant is without sufficient knowledge or information 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 the same as untrue.

4. Registrant denies the allegations set forth in Paragraph 4 of Petitioner's Petition to cancel as untrue.

5. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 5 of Petitioner's Petition to cancel and therefore denies the same as untrue.

6. Registrant admits the allegations contained in paragraph 6 of Petitioner's Petition to Cancel.

7. Registrant admits the allegations contained in paragraph 7 of Petitioner's Petition to Cancel.

8. Registrant admits the allegations contained in paragraph 8 of Petitioner's Petition to Cancel.

9. Registrant denies the allegations set forth in Paragraph 9 of Petitioner's Petition to Cancel as untrue.

10. With respect to the allegations set forth in Paragraph 10 of Petitioner's Petition to Cancel, Registrant admits that Registrant's Mark and Petitioner's applied-for Mark both contain the terms "free will" and that Petitioner's applied-for mark is confusingly similar to Registrant's mark. By way of further answer, Registrant's registered trademark is distinguishable from Petitioner's applied-for mark as Registrant's prior registration includes a significant and unique

design in a stylized font and arrangement, which is not present in Petitioner's application for trademark registration of a word mark.

11. With respect to the allegations set forth in Paragraph 11 of Petitioner's Petition to Cancel, Registrant admits that the goods covered by Registrant's trademark registration and included in Petitioner's application are "beer."

12. With respect to the allegations set forth in Paragraph 12 of Petitioner's Petition to Cancel, Registrant admits that the goods sold under its FREE WILL PALE ALE and Design registration move in the same channels of trade and are purchased and consumed by the same general class of consumers as the goods sold by Petitioner under Petitioner's applied-for mark.

13. Registrant denies the allegation set in Paragraph 13 of Petitioner's Petition to Cancel as untrue.

14. Registrant denies the allegation set in Paragraph 14 of Petitioner's Petition to Cancel as untrue.

15. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 15 of Petitioner's Petition to cancel and therefore denies the same as untrue.

COUNT I
LIKELIHOOD OF CONFUSION

16. Registrant incorporates by reference and re-alleges its responses to Paragraphs 1 through 15.

17. With respect to the allegations set forth in Paragraph 17 of Petitioner's Petition to Cancel, Registrant denies as untrue the allegation that Registrant's mark should be cancelled because it consists of or comprises a mark that resembles a mark used by Petitioner prior to Registrant's use of Registrant's mark or that any use of Registrant's marks by Registrant are likely to cause damage to Petitioner's alleged marks. Registrant admits that Petitioner's alleged

mark is likely to cause confusion with Registrant's previously used and registered mark.

COUNT II
LACK OF USE IN INTERSTATE COMMERCE

18. Registrant incorporates by reference and re-alleges its responses to Paragraphs 1 through 17.

19. Registrant denies the allegation set forth in Paragraph 19 of Petitioner's Petition to cancel as untrue.

COUNT III
FRAUD

20. Registrant incorporates by reference and re-alleges its responses to Paragraphs 1 through 19.

21. Registrant denies the allegation set forth in Paragraph 21 of Petitioner's Petition to cancel as untrue.

22. Registrant denies the allegation set forth in Paragraph 22 of Petitioner's Petition to cancel.

Registrant further denies that Petitioner is entitled to the relief which it seeks. In all other respects, to the extent that any allegation in the Petition for Cancellation has not been specifically admitted herein, such allegations are hereby denied.

Respectfully Submitted,
HERTZ SCHRAM PC

/Joseph A. Bellanca/
Joseph A. Bellanca (P71649)
Attorney for Registrant/Respondent
Birdsong Brewery LLC
1760 S. Telegraph Road, Suite 300
Bloomfield Hills, MI 48302
P: (248) 335-5000
F: (248) 335-3346
jbellanca@hertzschram.com

Dated: April 26, 2016

{H0340350.1}

AFFIRMATIVE DEFENSES

1. The Petition to Cancel fails to state a claim upon which relief may be granted.
2. Petitioner is barred in whole or in part from seeking cancellation of Registrant's trademark under the doctrines of laches, estoppel, waiver and unclean hands.
3. Registrant has priority of first use of its mark and is entitled to registration of its FREE WILL PALE ALE trademark.
4. Petitioner has failed to allege fraud in particularity in accordance with Fed.R.Civ.P. 9(b).
5. Registrant hereby gives notice that it intends to rely on additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such affirmative defenses.

WHEREFORE, Registrant prays that the Petition for Cancellation be denied.

Respectfully Submitted,
HERTZ SCHRAM PC

/Joseph A. Bellanca/ _____
Joseph A. Bellanca (P71649)
Attorney for Registrant/Respondent
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 Petitioner, :
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 v. : Cancellation No. 92063351
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 Birdsong Brewing, LLC :
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 Registrant/Respondent. :

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2016, I served the attached document by first-class U.S. mail, postage prepaid, with a courtesy copy by electronic mail, upon the following attorney of record for the Petitioner, Free Will Brewing Co., LLC:

Brian P. Gregg
Carol Steinour Young
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1165

/Joseph A. Bellanca/
Joseph A. Bellanca (P71649)
Attorney for Registrant/Respondent
Brewery LLC