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

Proceeding	91216164
Party	Plaintiff Innotek, Inc.
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Attachments	Answer to Counterclaim.pdf(108127 bytes)

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

Innotek, Inc.,)	
)	Opposition No.91216164
Opposer,)	Mark: SMART DOG UNIVERSITY
)	Application Ser. No. 86/092,854
v.)	Filed: October 16, 2013
)	Published: April 1, 2014
Smart Dog University, LLC,)	
)	Counterclaim to Cancel
Applicant.)	SMART DOG
)	Reg. No. 2,411,822
)	

ANSWER AND DEFENSES TO COUNTERCLAIM

Innotek, Inc., (“Innotek,” “Respondent,” or “Opposer”) hereby answers the Counterclaim to cancel U.S. Reg. No. 2,411,822 for SMART DOG (the “Mark” or the “Innotek Registration”) filed by Smart Dog University, LLC (“SDU,” “Petitioner,” or “Applicant”). Innotek responds to the numbered paragraphs in the Counterclaim as follows:

49. Admitted that SDU’s Counterclaim purports to attack the validity of the SMART DOG mark, but denied that the SMART DOG mark is or has become generic or that the Innotek Registration is otherwise invalid. Further denied that SDU has pleaded facts sufficient to support a claim to cancel the SMART DOG mark based on genericness or on any other basis.

50. Denied that Applicant has an equal right to use the SMART DOG UNIVERSITY mark or that Applicant will be damaged in the event that Innotek’s Registration is not cancelled. Innotek is without sufficient information to admit or deny the remaining allegations in Paragraph 50 at this time, and therefore denies the same.

51. Application Serial No. 86/092,854 (the “SDU Application”) for SMART DOG UNIVERSITY speaks for itself; any and all allegations in Paragraph 51 that are inconsistent with the SDU Application are denied.

52. Innotek is without sufficient information to admit or deny the allegations in Paragraph 52 at this time, and therefore denies the same.

53. Innotek is without sufficient information to admit or deny the allegations in Paragraph 53 at this time, and therefore denies the same.

54. Innotek is without sufficient information to admit or deny the allegations in Paragraph 54 at this time, and therefore denies the same.

55. Innotek is without sufficient information to admit or deny the allegations in Paragraph 55 at this time, and therefore denies the same.

56. Admitted.

57. Application Serial No. 75/608,700 (the “Innotek Application”) and the Innotek Registration for the SMART DOG mark speak for themselves; any and all allegations in Paragraph 57 that are inconsistent with the Innotek Application or the Innotek Registration are denied.

58. The Innotek Registration speaks for itself; any and all allegations in Paragraph 58 that are inconsistent with it are denied.

59. Admitted.

60. Innotek denies the allegations in Paragraph 60 and demands strict proof thereof.

61. Innotek is without sufficient information to admit or deny the allegations in Paragraph 61 at this time, and therefore denies the same.

62. Innotek is without sufficient information to admit or deny the allegations in Paragraph 62 at this time, and therefore denies the same.

63. Innotek is without sufficient information to admit or deny the allegations in Paragraph 63 at this time, and therefore denies the same.

64. Denied that the term “smart” has become generic as to the goods described in the Innotek Registration. Application Serial No. 78/699,652 and U.S. Registration No. 3,132,603 (the “Perimeter Registration”) speak for themselves; any and all allegations in Paragraph 64 that are inconsistent with them are denied.

65. The Perimeter Registration speaks for itself; any and all allegations in Paragraph 65 that are inconsistent with it are denied.

66. Admitted that the presentation of the SMART DOG mark has changed over the years. Denied that Innotek’s SMART DOG mark has become generic or that Innotek’s use of its SMART DOG mark has been modified in response to, or because of, the alleged genericness.

67. Admitted that the presentation of the SMART DOG mark has changed over the years. The prosecution history for the Innotek Registration speaks for itself; any and all allegations inconsistent with it are denied. Denied that the SMART DOG mark is or has become generic.

68. Innotek is without sufficient information to admit or deny the allegations in Paragraph 68, and therefore denies the same.

69. Denied.

70. Denied.

71. Denied.

72. Denied that Innotek's SMART DOG mark is narrow. Innotek is without sufficient information to admit or deny the remaining allegations in Paragraph 72, and therefore denies the same.

73. U.S. Registration No. 1,559,337 speaks for itself; any and all allegations in Paragraph 73 that are inconsistent with it are denied.

74. U.S. Registration No. 1,840,778 speaks for itself; any and all allegations in Paragraph 74 that are inconsistent with it are denied.

75. U.S. Registration No. 2,776,584 speaks for itself; any and all allegations in Paragraph 75 that are inconsistent with it are denied.

76. U.S. Registration No. 3,102,115 speaks for itself; any and all allegations in Paragraph 76 that are inconsistent with it are denied.

77. U.S. Registration No. 3,156,061 speaks for itself; any and all allegations in Paragraph 77 that are inconsistent with it are denied.

78. U.S. Registration No. 3,160,912 speaks for itself; any and all allegations in Paragraph 78 that are inconsistent with it are denied.

79. U.S. Registration No. 3,196,335 speaks for itself; any and all allegations in Paragraph 79 that are inconsistent with it are denied.

80. U.S. Registration No. 3,220,843 speaks for itself; any and all allegations in Paragraph 80 that are inconsistent with it are denied.

81. U.S. Registration No. 3,247,549 speaks for itself; any and all allegations in Paragraph 81 that are inconsistent with it are denied.

82. U.S. Registration No. 3,330,768 speaks for itself; any and all allegations in Paragraph 82 that are inconsistent with it are denied.

83. U.S. Registration No. 3,227,779 speaks for itself; any and all allegations in Paragraph 83 that are inconsistent with it are denied.

84. U.S. Registration No. 3,237,319 speaks for itself; any and all allegations in Paragraph 84 that are inconsistent with it are denied.

85. U.S. Registration No. 3,357,904 speaks for itself; any and all allegations in Paragraph 85 that are inconsistent with it are denied.

86. U.S. Registration No. 3,357,102 speaks for itself; any and all allegations in Paragraph 86 that are inconsistent with it are denied.

87. U.S. Registration No. 3,341,307 speaks for itself; any and all allegations in Paragraph 87 that are inconsistent with it are denied.

88. U.S. Registration No. 3,326,238 speaks for itself; any and all allegations in Paragraph 88 that are inconsistent with it are denied.

89. U.S. Registration No. 3,399,613 speaks for itself; any and all allegations in Paragraph 89 that are inconsistent with it are denied.

90. U.S. Registration No. 3,420,018 speaks for itself; any and all allegations in Paragraph 90 that are inconsistent with it are denied.

91. U.S. Registration No. 3,453,791 speaks for itself; any and all allegations in Paragraph 91 that are inconsistent with it are denied.

92. U.S. Registration No. 3,467,978 speaks for itself; any and all allegations in Paragraph 92 that are inconsistent with it are denied.

93. U.S. Registration No. 3,589,265 speaks for itself; any and all allegations in Paragraph 93 that are inconsistent with it are denied.

94. U.S. Registration No. 3,640,248 speaks for itself; any and all allegations in Paragraph 94 that are inconsistent with it are denied.

95. U.S. Registration No. 3,678,351 speaks for itself; any and all allegations in Paragraph 95 that are inconsistent with it are denied.

96. U.S. Registration No. 3,758,436 speaks for itself; any and all allegations in Paragraph 96 that are inconsistent with it are denied.

97. U.S. Registration No. 3,782,318 speaks for itself; any and all allegations in Paragraph 97 that are inconsistent with it are denied.

98. U.S. Registration No. 3,797,509 speaks for itself; any and all allegations in Paragraph 98 that are inconsistent with it are denied.

99. U.S. Registration No. 3,848,738 speaks for itself; any and all allegations in Paragraph 99 that are inconsistent with it are denied.

100. U.S. Registration No. 3,865,254 speaks for itself; any and all allegations in Paragraph 100 that are inconsistent with it are denied.

101. U.S. Registration No. 3,929,653 speaks for itself; any and all allegations in Paragraph 101 that are inconsistent with it are denied.

102. U.S. Registration No. 3,951,388 speaks for itself; any and all allegations in Paragraph 102 that are inconsistent with it are denied.

103. U.S. Registration No. 3,940,612 speaks for itself; any and all allegations in Paragraph 103 that are inconsistent with it are denied.

104. U.S. Registration No. 4,018,819 speaks for itself; any and all allegations in Paragraph 104 that are inconsistent with it are denied.

105. U.S. Registration No. 4,022,294 speaks for itself; any and all allegations in Paragraph 105 that are inconsistent with it are denied.

106. U.S. Registration No. 4,067,243 speaks for itself; any and all allegations in Paragraph 106 that are inconsistent with it are denied.

107. U.S. Registration No. 4,090,731 speaks for itself; any and all allegations in Paragraph 107 that are inconsistent with it are denied.

108. U.S. Registration No. 4,105,890 speaks for itself; any and all allegations in Paragraph 108 that are inconsistent with it are denied.

109. U.S. Registration No. 4,120,323 speaks for itself; any and all allegations in Paragraph 109 that are inconsistent with it are denied.

110. U.S. Registration No. 4,143,749 speaks for itself; any and all allegations in Paragraph 110 that are inconsistent with it are denied.

111. U.S. Registration No. 4,171,475 speaks for itself; any and all allegations in Paragraph 111 that are inconsistent with it are denied.

112. U.S. Registration No. 4,191,744 speaks for itself; any and all allegations in Paragraph 112 that are inconsistent with it are denied.

113. U.S. Registration No. 4,228,145 speaks for itself; any and all allegations in Paragraph 113 that are inconsistent with it are denied.

114. U.S. Registration No. 4,238,252 speaks for itself; any and all allegations in Paragraph 114 that are inconsistent with it are denied.

115. U.S. Registration No. 4,243,162 speaks for itself; any and all allegations in Paragraph 115 that are inconsistent with it are denied.

116. U.S. Registration No. 4,250,486 speaks for itself; any and all allegations in Paragraph 116 that are inconsistent with it are denied.

117. U.S. Registration No. 4,251,068 speaks for itself; any and all allegations in Paragraph 117 that are inconsistent with it are denied.

118. U.S. Registration No. 4,255,241 speaks for itself; any and all allegations in Paragraph 118 that are inconsistent with it are denied.

119. U.S. Registration No. 4,262,154 speaks for itself; any and all allegations in Paragraph 119 that are inconsistent with it are denied.

120. U.S. Registration No. 4,298,291 speaks for itself; any and all allegations in Paragraph 120 that are inconsistent with it are denied.

121. U.S. Registration No. 4,308,808 speaks for itself; any and all allegations in Paragraph 121 that are inconsistent with it are denied.

122. U.S. Registration No. 4,343,794 speaks for itself; any and all allegations in Paragraph 122 that are inconsistent with it are denied.

123. U.S. Registration No. 4,357,834 speaks for itself; any and all allegations in Paragraph 123 that are inconsistent with it are denied.

124. U.S. Registration No. 4,409,551 speaks for itself; any and all allegations in Paragraph 124 that are inconsistent with it are denied.

125. U.S. Registration No. 4,409,620 speaks for itself; any and all allegations in Paragraph 125 that are inconsistent with it are denied.

126. U.S. Registration No. 4,481,786 speaks for itself; any and all allegations in Paragraph 126 that are inconsistent with it are denied.

127. U.S. Registration No. 4,302,548 speaks for itself; any and all allegations in Paragraph 127 that are inconsistent with it are denied.

128. U.S. Registration No. 4,302,558 speaks for itself; any and all allegations in Paragraph 128 that are inconsistent with it are denied.

129. U.S. Registration No. 4,357,586 speaks for itself; any and all allegations in Paragraph 129 that are inconsistent with it are denied.

130. U.S. Registration No. 4,485,375 speaks for itself; any and all allegations in Paragraph 130 that are inconsistent with it are denied.

131. U.S. Registration No. 4,498,230 speaks for itself; any and all allegations in Paragraph 131 that are inconsistent with it are denied.

132. U.S. Registration No. 4,537,822 speaks for itself; any and all allegations in Paragraph 132 that are inconsistent with it are denied.

133. U.S. Registration No. 4,538,965 speaks for itself; any and all allegations in Paragraph 133 that are inconsistent with it are denied.

134. The application referenced herein, U.S. Serial No. 86/078,192, speaks for itself; any and all allegations in Paragraph 134 that are inconsistent with it are denied.

135. The application referenced herein, U.S. Serial No. 85/399,401, speaks for itself; any and all allegations in Paragraph 135 that are inconsistent with it are denied.

136. The application referenced herein, U.S. Serial No. 86/217,151, speaks for itself; any and all allegations in Paragraph 136 that are inconsistent with it are denied.

137. Innotek is without sufficient information to admit or deny the allegations in Paragraph 137, and therefore denies the same.

138. Innotek is without sufficient information to admit or deny the allegations in Paragraph 138, and therefore denies the same.

139. Innotek is without sufficient information to admit or deny the allegations in Paragraph 139, and therefore denies the same.

140. Innotek is without sufficient information to admit or deny the allegations in Paragraph 140, and therefore denies the same.

141. Innotek is without sufficient information to admit or deny the allegations in Paragraph 141, and therefore denies the same.

142. Innotek is without sufficient information to admit or deny the allegations in Paragraph 142, and therefore denies the same.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

AFFIRMATIVE DEFENSES

148. Innotek repeats incorporates herein each and every allegation contained in its Notice of Opposition as well as paragraphs 49 – 147 of its Answer, as if fully set forth herein.

149. SDU fails to state a claim upon which relief can be granted. At a minimum, and without limitation, SDU does not plead facts sufficient to support a finding that the primary significance of the SMART DOG mark to the relevant public is as a product descriptor for the goods listed in the Innotek Registration.

150. Innotek reserves the right to assert the equitable defense of laches should discovery reveal facts to support the defense.

151. Innotek reserves the right to assert the equitable defense of estoppel should discovery reveal facts to support the defense.

152. SDU's Counterclaim is or may be barred by the equitable defense of unclean hands.

Respectfully submitted,

Dated: July 28, 2014

INNOTEK, INC.

By its attorneys,

s/Ian G. McFarland

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER AND DEFENSES TO COUNTERCLAIM was filed electronically with the United States Patent and Trademark Offices' Electronic System for Trademark Trial & Appeals (ESTTA) on this 28th day of July, 2014. I further certify that a true and correct copy of this filing was served by U.S. mail, postage pre-paid, this 28th day of July, 2014, upon Applicant's Filing Correspondent:

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s/ Ian G. McFarland _____
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