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Filing date: **09/12/2018**

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

Proceeding	91242927
Party	Defendant 47 / 72 Inc.
Correspondence Address	Mike Lin 47 / 72 Inc 100 S Alameda StUnit 267 Los Angeles, CA 90012 UNITED STATES mikelinsf@gmail.com no phone number provided
Submission	Answer and Counterclaim
Filer's Name	Jackson MacDonald
Filer's email	jackson@macgl.com
Signature	/JMD/
Date	09/12/2018
Attachments	Answer and Counterclaim - 91242927.pdf(111241 bytes)

Registration Subject to the filing

Registration No.	4400287	Registration date	09/10/2013
Registrant	TERRA TECH INC. 2040 Main Street, Suite 225 Irvine, CA 92614 UNITED STATES Email: efilings@knobbe.com		

Goods/Services Subject to the filing

Class 025. First Use: 2011/06/16 First Use In Commerce: 2011/06/16

All goods and services in the class are requested, namely: Apparel, namely, T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, dresses, skirts, underwear, socks, bathing suits and belts

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

Terra Tech Corp.,)	
Opposer,)	Opposition No. 91242927
)	
)	Mark: IV:XX
v.)	
)	Application Serial No. 87005855
47 / 72 Inc.,)	
Applicant.)	
)	
)	
)	

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM TO CANCEL REGISTRATION**

Applicant, 47 / 72 Inc. (“Applicant”), by and through its undersigned attorney, hereby submits its Answer to the Notice of Opposition filed August 8, 2018 by Opposer Terra Tech Corp. and its Counterclaim for Cancellation of Opposer’s Registration No. 4400287.

Applicant answers the allegations in the Notice of Opposition as follows:

1. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 and accordingly denies those allegations.
2. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 2 and accordingly denies those allegations.
3. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 3 and accordingly denies those allegations.
4. Applicant admits that a printout of Registration No. 4400287 from the USPTO’s TSDR database is attached to the Notice of Opposition as Exhibit 1. Applicant does not have sufficient knowledge or information to form a belief as to the remainder of the allegations contained in

Paragraph 4 and accordingly denies those allegations.

5. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 5 and accordingly denies those allegations.
6. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 6 and accordingly denies those allegations.
7. Denied.
8. Applicant admits that a printout of Application Serial No. 86761848 from the USPTO's TSDR database is attached to the Notice of Opposition as Exhibit 2. Applicant does not have sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 8 and accordingly denies those allegations.
9. Applicant admits that a printout of Application Serial No. 86543640 from the USPTO's TSDR database is attached to the Notice of Opposition as Exhibit 3. Applicant does not have sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 9 and accordingly denies those allegations.
10. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 10 and accordingly denies those allegations.
11. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 11 and accordingly denies those allegations.
12. Denied.
13. Denied.
14. Denied.
15. Denied.

AFFIRMATIVE DEFENSES

1. Opposer's claims are barred by the doctrine of Unclean Hands.
 - a. Opposer is attempting to block others from the lawful use of marks while waiting for Opposer's planned use to become lawful under federal law. Upon information and belief, Opposer uses, has used, and intends to use its claimed IVXX mark only in connection with cannabis related products that violate the Controlled Substances Act. Opposer has and is attempting to obtain allowed applications and registrations to cover non-cannabis products with which Opposer has no bona fide intention to sell for the purpose of preventing the registration by others in the hopes that changes in federal law eventually allow registration of Opposer's claimed IVXX mark with Opposer's goods.
 - b. Opposer made false and/or misleading statements in connection with the prosecution of its applications. On September 5, 2016 the Examining Attorney assigned to Opposer's Application Serial No. 86543640 (the "'640 Application") issued a Final Office Action refusing registration pursuant to Trademark Act Sections 2(e)(1), 1 and 45.
 - i. In its March 6, 2017 response to this office action Opposer stated that "IVXX does not equal 420 in Roman Numerals ... IVXX actually is the number 14." Upon information and belief, this statement was false and misleading because Opposer adopted the IVXX mark as a representation of the number "420" and Opposer consistently uses the number "420" with its claimed IVXX. With this statement Opposer intended to mislead the Examining Attorney to avoid a Trademark Act Section 2(e)(1) refusal.
 - ii. Additionally, in its March 6, 2017 response Opposer alleged that the goods listed in the '640 Application are non-cannabis related products and that "Applicant's goods do not include items and/or activities that are prohibited by the CSA and do

not contain marijuana.” Upon information and belief, Opposer sells only cannabis related products and does not have a bona fide intent to use its claimed IVXX mark in connection with non-cannabis related products. With these statements Opposer misled the Examining Attorney to avoid a refusal based on Trademark Act Sections 1 and 45.

- c. Opposer’s claimed IVXX mark is merely descriptive for use with Opposer’s claimed goods and services. Opposer’s IVXX mark merely describes the purpose, characteristic, quality, or use of Opposer’s goods.

COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NO. 4400287

Applicant hereby seeks cancellation of Opposer’s Registration No. 4400287 for the mark IVXX covering “apparel, namely, T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, dresses, skirts, underwear, socks, bathing suits and belts” in International Class 25 (the “’287 Registration”). The grounds in support of cancellation are as follows:

1. The current owner of the ‘287 Registration is Opposer Terra Tech Inc., a Nevada corporation with a business address of 2040 Main Street, Suite 225, Irvine, California 92614 (“TT” or “Opposer”).
2. The application that matured into the ‘287 Registration was filed on June 20, 2011 by Bianca Barnhill, in individual citizen of the United States, with assistance of attorney Pollie Gautsch and the law firm G&A Legal, APC, pursuant to Trademark Act Section 1(a) claiming actual use of the IVXX mark in commerce at least as early as June 16, 2011.
3. On April 1, 2015 Bianca Barnhill assigned the ‘287 Registration to BGB Media, LLC, a California limited liability company of which Bianca Barnhill was a member.
4. On October 8, 2015 BGB Media, LLC assigned the ‘287 Registration to Be Green Media, LLC, a California limited liability company of which Bianca Barnhill was a member and CEO.

5. On March 28, 2016 Be Green Media, LLC assigned the '287 Registration to TT.
6. Opposer owns and uses the domain names www.ivxx.com and www.terratechcorp.com.
7. Opposer or its predecessor(s) have previously used the domain names www.ivxxonline.com and www.ivxxelevate.com.
8. Opposer owns and uses various social media page names and user names incorporating the mark IVXX, including the Facebook.com name @ivxxbrand and the Twitter.com name @ivxx_elevate.

Count I: Fraud

9. In connection with filing the application that matured into the '287 Registration, Opposer's predecessor in interest Bianca Barnhill made false, material representations of fact with the intent to deceive the USPTO.
10. In connection with filing her application Ms. Barnhill submitted a specimen of use purportedly showing her use of the IVXX mark in commerce with a t-shirt. This specimen showed the mark used only as an ornamental design on the front of a t-shirt, not as a trademark.
11. Ms. Barnhill digitally altered the specimen to include a digital representation of a hang-tag attached to the shirt with the IVXX mark digitally added to the hang tag.
12. In connection with filing her application Ms. Barnhill included a statement in the application that the mark "is now in use in commerce" and that the specimen submitted "show[s] the mark as used in commerce" and signed a declaration stating "The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares ... that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."
13. This statement and declaration were false because the mark was not actually in use in commerce

by Ms. Barnhill in the ordinary course of trade with any of the listed goods prior to the application filing date.

14. This statement and declaration were false because the specimen submitted with the application was digitally altered to include a hang-tag that did not in fact exist and did not show the mark as used in commerce.
15. Ms. Barnhill's false statements were material in that they were necessary for the USPTO to accept and approve the application and issue the '287 Registration.
16. Ms. Barnhill made these statements with the intent to deceive the USPTO into issuing a registration to which Ms. Barnhill was not entitled.

Count II: No Bona Fide Use in Commerce Prior to Application Filing

17. The application that matured in the '287 Registration, and the resulting registration, are void *ab initio* under Trademark Act Section 1(a) due to no bona fide use of the IVXX mark in commerce with any of the listed goods prior to the application filing date.
18. Upon information and belief, Opposer or its predecessor(s) had no use in commerce of the IVXX mark with any of the listed Class 25 goods prior to the June 20, 2011 filing date of the application.
19. Upon information and belief, the website located at the domain www.ivxxonline.com, through which Opposer's predecessor Bianca Barnhill sold goods under the IVXX mark, was not active until at least 2013.
20. On November 14, 2012 Opposer's predecessor announced via the Twitter.com account @IVXXonline "#IVXX Launching Spring 2013." This was the first "tweet" sent from this account.
21. On October 24, 2013 Opposer's predecessor announced via the Instagram.com account @ivxxonline "#ivxx hats, tees, ashtrays, and more available on ivxxonline.com." This was the first post from this account.

Count III: Abandonment

22. Opposer has abandoned the mark IVXX for use with Apparel, namely, T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, jackets, hats, visors, shoes, sandals, dresses, skirts, underwear, socks, bathing suits and belts in International Class 25 (“Opposer’s Goods”).
23. Opposer discontinued the use of the mark IVXX on or in connection with Opposer’s Goods.
24. Opposer discontinued the use of the mark IVXX on or in connection with Opposer’s Goods more than three years prior to the filing of this counterclaim for cancellation and has not resumed use since such discontinuance.
25. Opposer’s discontinuance of use of the IVXX mark on or in connection with Opposer’s Goods was accompanied by Opposer’s intent not to resume use of the IVXX mark on or in connection with Opposer’s Goods.
26. The product page on Opposer’s website, located at the domain www.ivxx.com, displays only cannabis products and does not include any of Opposer’s Goods.
27. The “store locator” page on Opposer’s website, located at the domain www.ivxx.com, includes six locations in the Los Angeles, California area. As of August 21, 2018, none of those six locations sold Opposer’s Goods or any products under the IVXX mark.
28. The domain address through which Opposer or its predecessor(s) previously sold Opposer’s Goods, www.ivxxonline.com, is no longer active.
29. Neither Opposer nor its predecessor(s) have at any time used IVXX as a trademark with Opposer’s Goods.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's

trademark; and Applicant prays that this Opposition be dismissed, that Applicant be granted registration of its trademark, and that Opposer's Registration No. 4400287 be cancelled.

Dated: September 12, 2018

Respectfully submitted,

MAC LEGAL LLC

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CERTIFICATE OF SERVICE

This is to certify that a copy of this **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO CANCEL REGISTRATION** is being served via email on September 12, 2018 to Opposer's counsel of record addressed as follows:

efiling@knobbe.com, Jonathan.Hyman@knobbe.com

/JMD/

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