

ESTTA Tracking number: **ESTTA962073**

Filing date: **03/22/2019**

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

Proceeding	91243006
Party	Defendant Thirdlove, Inc.
Correspondence Address	JEFFREY L SNOW PRYOR CASHMAN LLP 7 TIMES SQUARE NEW YORK, NY 10036-6569 UNITED STATES jsnow@pryorcashman.com, rklarberg@pryorcashman.com, jweigen- berg@pryorcashman.com 212-421-4100
Submission	Answer and Counterclaim
Filer's Name	Jeffrey L. Snow
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Signature	/jeffrey l. snow/
Date	03/22/2019
Attachments	Applicants Answer and Counterclaim .pdf(150253 bytes)

Registration Subject to the filing

Registration No.	3599363	Registration date	03/31/2009
Registrant	Dolce Vita Intimates LLC 183 Madison Avenue New York, NY 10016 UNITED STATES		

Goods/Services Subject to the filing

Class 025. First Use: 2008/12/00 First Use In Commerce: 2008/12/00
All goods and services in the class are requested, namely: Undergarments

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application
Serial No. 86/710,362
Mark: 24/7

DOLCE VITA INTIMATES LLC,

Opposer/Respondent,

-against-

THIRDLOVE, INC.,

Applicant/Petitioner.

Opposition No. 91/243,006

**APPLICANT’S ANSWER AND
COUNTERCLAIM FOR PETITION FOR CANCELLATION**

Applicant Thirdlove, Inc. (“Applicant”), by its attorneys, Pryor Cashman LLP, as and for its Answer to the claims asserted in the Notice of Opposition (“Opposition”) filed on behalf of Dolce Vita Intimates LLC (“Opposer”), denies that Opposer will be damaged by the registration of Applicant’s trademark 24/7 (Serial No. 86/710,362) (the “Mark”). With respect to the specific assertions in the Opposition, Applicant respectfully responds as follows:

1. Applicant denies each and every allegation set forth in Paragraph 1 of the Opposition.
2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Opposition.
3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Opposition.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Opposition.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Opposition.

6. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Opposition.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Opposition, except Applicant admits the existence of U.S. Registration No. 3,599,363.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Opposition.

9. Applicant admits the allegations set forth in Paragraph 9 of the Opposition, except Applicant states that its current identification of goods for Application Serial No. 86/710,362 identifies “Bras; Lingerie; Women's underwear” and rejects Opposer’s definitions of “Application” and “Applicants’ Goods”.

10. Applicant denies each and every allegation set forth in Paragraph 10 of the Opposition.

11. Applicant denies each and every allegation set forth in Paragraph 11 of the Opposition.

12. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Opposition.

13. Applicant denies each and every allegation set forth in Paragraph 13 of the Opposition.

14. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Opposition.

15. Applicant denies each and every allegation set forth in Paragraph 15 of the Opposition.

16. Paragraph 16 contains legal conclusions, and to the extent a further response is required, Applicant denies each and every allegation set forth in Paragraph 16 of the Opposition.

17. Applicant denies each and every allegation set forth in Paragraph 17 of the Opposition.

18. Applicant denies each and every allegation set forth in Paragraph 18 of the Opposition.

19. Applicant denies each and every allegation set forth in Paragraph 19 of the Opposition.

20. Applicant denies each and every allegation set forth in Paragraph 20 of the Opposition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

21. The Opposition fails to state any claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. Opposer's allegations are barred by the equitable doctrines of waiver, estoppel, laches, acquiescence and/or unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. Opposer lacks standing to assert its claims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

24. Applicant's use and/or registration of the Mark will not create any likelihood of confusion, mistake or deception because, inter alia, the Mark and Opposer's alleged mark are not "so similar" as alleged by Opposer.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

25. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Applicant reserves the right to assert additional affirmative defenses for which it has developed factual support pending the outcome of discovery or otherwise.

**APPLICANT'S COUNTERCLAIM FOR CANCELLATION OF
OPPOSER'S REGISTRATION NO. 3,599,363**

26. Applicant hereby seeks cancellation of Opposer's Registration No. 3,599,363 due to abandonment. As grounds for the Counterclaim, pursuant to Trademark Act § 14, 15 U.S.C. § 1064 and TBMP § 313.01, it is alleged that:

24. Applicant has standing to bring this Counterclaim as a result of the Opposition filed by Opposer, Opposition No. 91/243,006, in which Opposer claims ownership of Reg. No. 3,599,363.

25. Upon information and belief, Opposer has made no use of the 24/7 COMFORT mark in connection with the goods identified in Reg. No. 3,599,363 for at least three consecutive years, and Opposer has no intent to resume such use.

26. As a result of Opposer's failure to use the 24/7 COMFORT mark in connection with the goods identified in Reg. No. 3,599,363, for at least three consecutive years with the intent not to resume such use, the 24/7 COMFORT mark that is the subject of U.S. Reg. No. 3,599,363 has become abandoned for purposes of Section 45 of the Trademark Act.

27. Applicant will be damaged by the continuing registration of the 24/7 COMFORT mark, Reg. No. 3,599,363, because the registration is the basis for the Opposition against registration of Applicant's Mark.

WHEREFORE, Applicant respectfully requests that the Board: (i) cancel U.S. Reg. No. 3,599,363; (ii) dismiss Opposition No. 91/243,006 with prejudice; (iii) allow Application Serial No. 86/710,362 to proceed to registration; and (iv) grant any and all further relief to Applicant that the Board finds necessary and just in the circumstances.

Applicant appoints as its attorney in this proceeding Jeffrey L. Snow, Ryan S. Klarberg, and Joshua Weigensberg of the firm Pryor Cashman LLP, 7 Times Square, New York, New York 10036-6569, to whom all correspondence in this proceeding should be addressed. Please charge Deposit Account No. 500932 for the filing fee for this Counterclaim and for any other fees that may be due.

Dated: March 22, 2019

Respectfully submitted,

PRYOR CASHMAN LLP

/jeffrey l. snow/_____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Applicant's Answer and Counterclaim for Petition for Cancellation has been served upon Opposer's counsel by email on March 22, 2019 at the following e-mail addresses:

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