



5. Registrant denies the first sentence of Paragraph 5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 5, and therefore denies same.
6. Paragraph 6 is not an allegation but a request to the Trademark Trial and Appeal Board and requires no response. To the extent a response is required, the allegations of Paragraph 6 are denied.
7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 7, and therefore denies same. The second sentence of Paragraph 7 is not an allegation but a request to the Trademark Trial and Appeal Board and requires no response. To the extent a response is required, Registrant is without knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 7, and therefore denies same.
8. The allegations of Paragraph 8 are admitted.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Registrant is the senior user and has made continuous use of the marks reflected in the registrations at issue in this cancellation proceeding, which use continues at present.

### **SECOND AFFIRMATIVE DEFENSE**

There is no requirement of obtaining FDA approval to sell goods in Class 5 nor to market goods in the manner done by Registrant, nor is FDA approval a requirement to obtain or maintain trademark registrations for same.

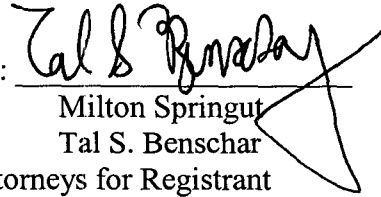
WHEREFORE Registrant requests that the Petition For Cancellation be dismissed.

Dated: March 12, 2002

Respectfully Submitted,

KALOW & SPRINGUT, LLP

By:



A handwritten signature in black ink, appearing to read "Tal S. Benschar", is written over a horizontal line. The signature is stylized and cursive.

Milton Springut

Tal S. Benschar

Attorneys for Registrant

488 Madison Avenue

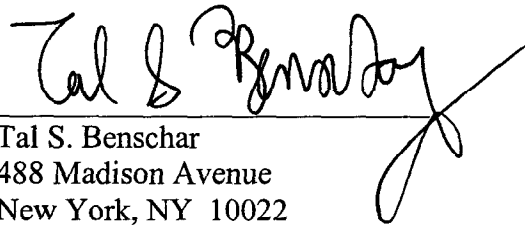
New York, NY 10022

(212) 813-1600

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

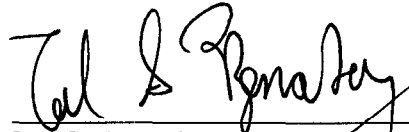
Date of Deposit: March 12, 2002

I hereby certify that the annexed AMENDED ANSWER AND AFFIRMATIVE DEFENSES are being deposited with the United States "Postal service in accordance with 37 C.F.R. 1.10 on the date indicated above and with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513.

  
Tal S. Benschar  
488 Madison Avenue  
New York, NY 10022

Certificate of Service

The undersigned hereby certifies that a true copy of the above AMENDED ANSWER AND AFFIRMATIVE DEFENSES was served on Petitioner's attorney of record, by first class mail, postage prepaid, addressed to Oliver E. Todd, Jr., Esq., MacMillan, Sobanski & Todd, LLC, One Maritime Plaza, 4<sup>th</sup> Floor, Toledo, Ohio 43604 on this 12<sup>th</sup> day of March, 2002

  
Tal S. Benschar