

ESTTA Tracking number: **ESTTA28461**

Filing date: **03/17/2005**

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

<b>Proceeding</b>	92044209
<b>Party</b>	Defendant Eres Eres S.A. 2 Rue Tronchet FRX 75008 Paris,
<b>Correspondence Address</b>	ARLENE B. SAVITSKY TRADEMARK SERVICES LIMITED 9 WEST 57TH STREET 44TH FL NEW YORK, NY 10019
<b>Submission</b>	Answer
<b>Filer's Name</b>	Michael Chiappetta
<b>Filer's e-mail</b>	mchiappetta@fzlz.com
<b>Signature</b>	/Michael Chiappetta/
<b>Date</b>	03/17/2005
<b>Attachments</b>	Answer to Petition for Cancellation.pdf ( 4 pages )

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

In the Matter of Trademark Registration No. 2,320,998  
For the Mark ERES

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SAMUEL ROSENBLATT & HELENE	:	
ROZENBLAT d/b/a "ERES"	:	Cancellation No. 92044209
	:	
Petitioners,	:	
	:	
-against-	:	
	:	
ERES	:	
	:	
Registrant.	:	
-----X		

**ANSWER TO PETITION FOR CANCELLATION**

Registrant Eres ("Eres") by its undersigned counsel, Fross Zelnick Lehrman & Zissu, P.C. for its answer to the Petition for Cancellation states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition for Cancellation and therefore denies the same.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Petition for Cancellation and therefore denies the same.
3. Admits the allegations contained in paragraph 3 of the Petition for Cancellation and further notes that Registrant has been using the trademark and service mark ERES in the United States on or in connection with clothing and retail store services for decades without any evidence of any actual confusion.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Petition for Cancellation and therefore denies the same.
5. Admits the allegations contained in paragraph 5 of the Petition for Cancellation.
6. Admits the allegations contained in paragraph 6 of the Petition for Cancellation.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Petition for Cancellation and therefore denies the same.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 in the Petition for Cancellation and therefore denies the same.

9. Denies the allegations in paragraph 9 of the Petition for Cancellation.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. Registrant has been using ERES in connection with the goods identified in the registration sought to be cancelled for decades without any actual confusion. This coexistence shows that there is no likelihood of confusion between the parties' respective marks.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. Registrant's Mark is used in connection with high-end fashion items which, upon information and belief, Petitioner has never offered under the ERES mark. Because the parties sell different products to different consumers there is no likelihood of confusion.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. By virtue of the fact that Registrant has been using the ERES mark for decades without objection or protest by Petitioners, Petitioners' claims are barred by the doctrines of laches, acquiescence and estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. On information and belief, Petitioners adopted the ERES mark with knowledge of Registrant's use of and rights in the ERES mark in France. By knowingly adopting a mark used by Registrant, Petitioners have proceeded in bad faith. Petitioners' bad faith adoption of the ERES mark which they assert in this proceeding constitutes unclean hands and bars them from relief.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. Upon information and belief, Petitioners have long abandoned use of the ERES mark in connection with the sale of clothing. As such, they have no right to assert the ERES mark against Registrant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

15. Petitioners are barred by the doctrine of res judicata in that Petitioners previously sought to cancel Registrant's nearly identical mark ERES TOP SHOP which mark is virtually indistinguishable from the mark at issue here. Petitioners lost that proceeding and are now estopped from seeking to cancel the ERES mark.

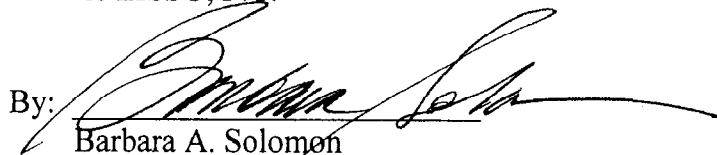
WHEREFORE Registrant requests that the Petition for Cancellation be dismissed with prejudice in its entirety and that the Trademark Trial and Appeal Board grant to Registrant such other and further relief as it deems just and proper.

Dated: New York, New York  
March 16, 2005

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FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.

By:

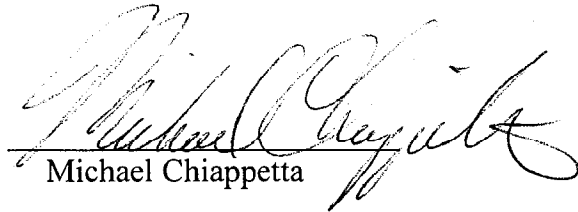


Barbara A. Solomon  
866 United Nations Plaza  
New York, New York 10017  
Tel: (212) 813-5900  
Fax: (212) 813-5901

Attorneys for Registrant, Eres

**CERTIFICATE OF SERVICE**

The undersigned, counsel for Registrant Eres, hereby certifies that a true and correct copy of the attached ANSWER TO PETITION FOR CANCELLATION was served by First Class Mail, postage prepaid, on counsel for Petitioner on March 16, 2005 by mailing the same to Sanford Astor, Esq., Birch, Stewart, Kolasch & Birch, LLP, 650 Town Center Drive, Suite 620 Costa Mesa, California 92626-7125.

  
Michael Chiappetta

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