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

Proceeding	92049427
Party	Defendant Michelle Lazar, Inc.
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Submission	Answer
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Attachments	Registrant's Answer.pdf (9 pages)(139537 bytes)

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

Centre de Traitement et de Regeneration du
Cheveau Jean-Francois Lazartigue

Petitioner,

v.

Michelle Lazar International, Inc.

Registrant.

Cancellation No. 92049427

U.S. Registration No. 3326134

Mark:



REGISTRANT MICHELLE LAZAR'S ANSWER

Registrant Michelle Lazar International, Inc. ("Registrant") hereby answers the Petition for Cancellation ("Petition") filed by Centre de Traitement et de Regeneration du Cheveau Jean-Francois Lazartigue ("Petitioner") as follows:

In response to the introductory unnumbered paragraph, Registrant denies Petitioner's allegation that it has been and will continue to be damaged by Registrant's U.S. Registration No. 3,326,134. In addition, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations, if any, in the introductory unnumbered paragraph of the Petition and, therefore, denies such allegations.

1. In response to paragraph 1, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Petition and, therefore, denies such allegations.


2. In response to paragraph 2, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Petition and, therefore, denies such allegations.

3. In response to paragraph 3, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 of the Petition and, therefore, denies such allegations.


4. In response to paragraph 4, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 of the Petition and, therefore, denies such allegations.

5. In response to paragraph 5, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Petition and, therefore, denies such allegations.

6. In response to paragraph 6, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 of the Petition and, therefore, denies such allegations.

7. In response to paragraph 7, Registrant admits that Michelle Lazar International, Inc. is a California corporation having a place of business at 1299 San Bernardino Avenue, San Bernardino, California 92408 and owner of U.S. Registration No. 3,326,134 for . Except as expressly admitted, Registrant denies the remaining allegations in paragraph 7 of the Petition.

8. In response to paragraph 8, Registrant admits that U.S. Application Serial No. 78/621,292 was filed on May 2, 2005, and matured into U.S. Registration No. 3,326,134. Registrant also admits that the goods listed in U.S. Application Serial No. 78/621,292 included the following: "Cosmetics, namely, after shave lotions, body powders, eye shadow, lipstick, eye make-up, facial make-up, make-up remover, mascara, lip glosses, nail polish, baby powder, talcum powder, rouge, skincare cream, skincare lotion and skincare mask; skin soap, deodorant soap, detergent soaps and body firming soaps; skin preparations, namely, body oils, baby oils, massage oils, body cream, hand cream, face cream, eye cream, bath gels and shaving gels; cosmetics for slimming purposes, namely, body slimming creams, cellulite creams, body firming creams and toning lotions for the face, body and hands; deodorants for personal use; depilatories; essential oils for personal use; essences, namely, perfumes, colognes and toilet

water, non-medicated preparations and substances for the treatment, care, control, styling and maintenance of the hair, namely hair shampoos, hair dyes, hair sprays, hair rinses, hair gels and hair conditioners; astringents, namely, moisturizers and face cleansers; exfoliant creams for the face, body and hands; anti-aging creams and gels; beauty serums; non-medicated skin serums” in International Class 3; and “Dietary drink mix for use as a meal replacement; meal replacement and dietary supplement drink mixes; meal replacement; namely, bars, drinks, powders, shakes and nutritional drink mixes; food supplements, namely, anti-oxidants; nutritional additives for use in foods and dietary supplements for human consumption; dietary food supplements; vitamin and mineral preparations for use as ingredients in the food and pharmaceutical industry; vitamins, namely, drops, enriched water, beverages, preparations, supplements and tablets” in International Class 5. Registrant also admits that its application to register  was filed pursuant to Section 1(a). Except as expressly admitted, Registrant denies the remaining allegations in paragraph 8 of the Petition.

9. In response to paragraph 9, Registrant admits that it identified its date of first use in commerce for the goods in International Class 3 listed in U.S. Application Serial No. 78/621,292 as November 1, 2003 and that it identified its date of first use in commerce for the goods in International Class 5 listed in U.S. Application Serial No. 78/621,292 as March 21, 2005. Except as expressly admitted, Registrant denies the remaining allegations in paragraph 9 of the Petition.

10. In response to paragraph 10, Registrant denies each and every allegation in paragraph 10 of the Petition.

11. In response to paragraph 11, Registrant denies each and every allegation in paragraph 11 of the Petition.

12. In response to paragraph 12, Registrant denies each and every allegation in paragraph 12 of the Petition.

13. In response to paragraph 13, Registrant denies each and every allegation in paragraph 13 of the Petition.

14. In response to paragraph 14, Registrant denies each and every allegation in paragraph 14 of the Petition.

15. In response to paragraph 15, Registrant denies each and every allegation in paragraph 15 of the Petition.

16. In response to paragraph 16, Registrant denies each and every allegation in paragraph 16 of the Petition.

17. In response to paragraph 17, Registrant denies each and every allegation in paragraph 17 of the Petition.

18. In response to paragraph 18, Registrant denies each and every allegation in paragraph 18 of the Petition.

19. In response to paragraph 19, Registrant denies each and every allegation in paragraph 19 of the Petition.

20. In response to paragraph 20, Registrant denies each and every allegation in paragraph 20 of the Petition.

21. In response to paragraph 21, Registrant denies each and every allegation in paragraph 21 of the Petition.

22. In response to paragraph 22, Registrant denies each and every allegation in paragraph 22 of the Petition.

23. In response to paragraph 23, Registrant denies each and every allegation in paragraph 23 of the Petition.

24. In response to paragraph 24, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 24 of the Petition and, therefore, denies such allegations.

25. In response to paragraph 25, Registrant denies each and every allegation in paragraph 25 of the Petition.

26. In response to paragraph 26, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26 of the Petition and, therefore, denies such allegations.

27. In response to paragraph 27, Registrant denies each and every allegation in paragraph 27 of the Petition.

28. In response to paragraph 28, Registrant denies each and every allegation in paragraph 28 of the Petition.

29. In response to paragraph 29, Registrant denies each and every allegation in paragraph 29 of the Petition.

30. In response to paragraph 30, Registrant denies each and every allegation in paragraph 30 of the Petition.

31. In response to paragraph 31, Registrant denies each and every allegation in paragraph 31 of the Petition.

32. In response to paragraph 32, Registrant denies each and every allegation in paragraph 32 of the Petition and denies that there is a basis to grant the Petition and states that U.S. Registration No. 3,326,134 should not be cancelled.

33. In response to paragraph 33, Registrant denies each and every allegation in paragraph 33 of the Petition.

34. In response to paragraph 34, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 34 of the Petition and that no response to paragraph 34 is required.

35. In response to paragraph 35, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 35 of the Petition and that no response to paragraph 35 is required.

In response to Petitioner's WHEREFORE and prayer for relief paragraph, Registrant denies that there is a basis to grant the Petition and states that U.S. Registration No. 3,326,134 should not be cancelled.

AFFIRMATIVE DEFENSES

By way of further answer, Registrant alleges and asserts the following defenses in response to the allegations contained in the Petition. In this regard, Registrant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Registrant reserves the right to assert other affirmative defenses as this cancellation proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Petitioner's claims that are not apparent on the face of the Petition.

FIRST AFFIRMATIVE DEFENSE **FAILURE TO STATE A CLAIM**

36. Petitioner's claims are barred, in whole or in part, because the Petition fails to state a claim upon which relief can be granted.


SECOND AFFIRMATIVE DEFENSE **NO INJURY OR DAMAGE**

37. Petitioner's claims are barred, in whole or in part, because Petitioner has not and will not suffer any injury or damage from U.S. Registration No. 3,326,134 or from its continued registration.


THIRD AFFIRMATIVE DEFENSE **LACK OF STANDING**


38. Petitioner's claims are barred, in whole or in part, because Petitioner does not have standing.

FOURTH AFFIRMATIVE DEFENSE **LACK OF ACTUAL CONFUSION**

39. Registrant has used its  mark in the United States since at least as early as November 1, 2003, but has not experienced any confusion with Petitioner or its goods and services. On information and belief, Petitioner also has not experienced any actual confusion, notwithstanding Registrant's use of its mark for many years.

FIFTH AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

40. Registrant's  mark differs in terms of sight, sound, and meaning from Petitioner's claimed J.F. LAZARTIGUE mark in standard characters and has a commercial impression that is distinct and different from Petitioner's claimed mark.

41. Registrant's use and registration of its  mark does not create a likelihood of confusion among consumers that its goods are offered by, are sponsored by, or are otherwise endorsed by Petitioner. Nor does Registrant's use or registration of its mark create a likelihood that consumers falsely will believe that Registrant and Petitioner are affiliated in any way.

SIXTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

42. Petitioner's claims are barred, in whole or in part, because Petitioner cannot establish prior exclusive rights in the United States sufficient to cancel Registrant's U.S. Registration No. 3,326,134.

SEVENTH AFFIRMATIVE DEFENSE
UNCLEAN HANDS

43. Petitioner's claims are barred, in whole or in part, by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE
ABANDONMENT

44. Petitioner's claims are barred, in whole or in part, due to Petitioner's discontinuation or abandonment of its claimed J.F. LAZARTIGUE mark.

NINTH AFFIRMATIVE DEFENSE
ESTOPPEL

45. Petitioner's claims are barred, in whole or in part, by the doctrine of estoppel.

TENTH AFFIRMATIVE DEFENSE
LACHES

46. Petitioner's claims are barred, in whole or in part, by the doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

47. Petitioner's claims are barred, in whole or in part, by the doctrine of acquiescence.

TWELFTH AFFIRMATIVE DEFENSE
WAIVER

48. Petitioner's claims are barred, in whole or in part, by the doctrine of waiver.

WHEREFORE, Registrant requests judgment as follows:

1. That the Petition be dismissed with prejudice;
2. That U.S. Registration No. 3,326,134 not be cancelled; and
3. That Registrant be granted further reasonable and appropriate relief.

Dated: July 14, 2008

Respectfully submitted,



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Attorneys for Registrant
Michelle Lazar International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the following document:

REGISTRANT'S ANSWER


has been served on

Robert F. Zielinski
Buchanan, Ingersoll & Rooney PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103

by mailing such document on July 14, 2008 by First Class Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: July 14, 2008



Bruno W. Tarabichi