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

Proceeding	92050616
Party	Defendant LINDORA, INC.
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Submission	Answer
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Date	04/06/2009
Attachments	ANSWER.pdf (8 pages)(365335 bytes)

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

RIOWELL, LLC, a Texas limited liability Company,)	
)	
)	
Petitioner,)	Cancellation No.: <u>92050616</u> Registration No.: <u>3228958</u>
v.)	
)	ANSWER
LINDORA, INC., a California Corporation,)	
)	
Registrant.)	
)	
)	

ANSWER TO PETITION FOR CANCELLATION

Lindora, Inc. ("Registrant") answers the Petition for Cancellation of Petitioner Riowell, LLC ("Petitioner") as follows:

In response to the introductory paragraph of the Petition for Cancellation, Registrant admits that it is the current owner of Registration No. 3228958, and that it is located at 3505 Cadillac Avenue, Suite N-2, Costa Mesa, California 92626. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in the balance of the introductory paragraph and therefore denies each and every remaining allegation contained therein.

1. In response to paragraph 1 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

2. In response to paragraph 2 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained

in said paragraph and therefore denies each and every allegation contained therein.

3. In response to paragraph 3 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

4. In response to paragraph 4 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

5. In response to paragraph 5 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

6. In response to paragraph 6 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

7. In response to paragraph 7 of the Petition for Cancellation, Registrant admits each and every allegation contained therein.

8. In response to paragraph 8 of the Petition for Cancellation, Registrant admits it filed an application for registration of the mark on December 13, 2002. Registrant admits the application lists the date of first use as "1994." Registrant admits the mark was registered on April 17, 2007.

9. In response to paragraph 9 of the Petition for Cancellation, Registrant admits that the goods identified in Registration No. 3228958 in international class 005 include "dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss." Registrant further admits that the goods identified in Registration No. 3228958 in international class 030 include "meal replacement, namely puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss." Registrant further admits

that the goods identified in Registration No. 3228958 in international class 029 include “meal replacement, namely chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups.” Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in the balance of said paragraph and therefore denies each and every remaining allegation contained therein.

10. In response to paragraph 10 of the Petition for Cancellation, Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies each and every allegation contained therein.

11. In response to paragraph 11 of the Petition for Cancellation, Registrant denies each and every allegation contained therein.

12. In response to paragraph 12 of the Petition for Cancellation, Registrant denies that Petitioner developed goodwill and widespread recognition prior to Registrant’s December 13, 2002 filing date and date of first use. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the balance of the allegations contained in said paragraph and therefore denies each and every remaining allegation contained therein.

13. In response to paragraph 13 of the Petition for Cancellation, Registrant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Petition for Cancellation on file in this action, Registrant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Grounds for Cancellation)

The Petition for Cancellation fails to set forth facts sufficient to constitute grounds for cancelling Registrant’s registration.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Petition for Cancellation is barred by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

Petitioner is estopped from asserting any claims against Registrant by reason of Petitioner's own acts, omissions, and conduct.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

Petitioner is barred from asserting any claims against Registrant by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Petitioner is barred by the equitable doctrine of waiver from asserting any claim against Registrant.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Petitioner is barred by the equitable doctrine of unclean hands from asserting any claim against Registrant.

SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

The Petition for Cancellation, and/or each and every purported claim contained therein, is barred because Petitioner would be unjustly enriched if it prevailed and cancelled Registrant's mark.

EIGHTH AFFIRMATIVE DEFENSE

(Petitioner's Own Actions)

The omissions, conduct and voluntary acts of Petitioner proximately caused, or otherwise contributed to, the matters of which it complains.

NINTH AFFIRMATIVE DEFENSE

(Previously Used Marks)

The Petition for Cancellation, and/or each and every claim contained therein, is barred by Registrant's previous adoption and use of the mark "LEAN FOR LIFE" prior to Petitioner's alleged use and/or registration of "LEANLIFE." Further, the Petition for Cancellation, and/or each and every claim contained therein, is barred by Registrant's previous adoption and use of the service mark "LEAN FOR LIFE!" prior to Petitioner's alleged use and/or registration of "LEANLIFE."

TENTH AFFIRMATIVE DEFENSE

(Abandonment)

The Petition for Cancellation, and/or each and every claim contained therein, is barred by Petitioner's abandonment of "LEAN LIFE."

ELEVENTH AFFIRMATIVE DEFENSE

(Fraudulent Registration)

Upon information and belief, the Petition for Cancellation and/or each and every claim contained therein, is barred by Petitioner's fraud on the USPTO in alleging a false date of first use.

TWELTH AFFIRMATIVE DEFENSE

(No Consumer Confusion)

Alternatively, the Petition for Cancellation, and/or each and every purported claim contained therein, is barred because there is no likelihood of consumer confusion. Specifically, "LEAN LIFE" in its entirety is sufficiently distinct from "LEAN FOR LIFE" to avoid confusion, deception or mistake as to the source or sponsorship or association of goods. Additionally "LEAN LIFE" is not the same as or confusingly similar to "LEAN FOR LIFE" in terms of connotation, appearance and/or pronunciation.

THIRTEENTH AFFIRMATIVE DEFENSE

(Dilution)

"LEAN LIFE" is highly diluted as a trademark formative, and hence weak, and Petitioner's purported rights extend no further than to the specific mark which Petitioner alleges it owns, which, alternatively, is not the same as or confusingly similar to "LEAN FOR LIFE" in terms of connotation, appearance and/or pronunciation.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning)

Upon information and belief, the Petition for Cancellation, and/or each and every claim contained therein, is barred because Petitioner's mark, "LEAN LIFE", has not become distinctive through the acquisition of secondary meaning and is merely descriptive.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Injury)

Petitioner cannot be injured by Registrant's use of the mark due to the prior registration and use of other marks by Registrant. Registrant registered the mark LEAN FOR LIFE! (Registration No. 1868744) which, with the exception of the explanation point, is identical in sight, sound, and appearance to the mark complained of. Further, the LEAN FOR LIFE! mark has continuously been used by Registrant since 1992, and Registrant has acquired substantial goodwill and recognition in the mark since 1992.

SIXTEENTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

Registrant reserves its right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

RESERVATION OF COUNTERCLAIMS

Registrant reserves the right to amend this Answer pursuant to Federal Rule of Civil Procedure 15 (a) and/or 15 (b), to assert counterclaims if grounds for counterclaims are learned during the course of the proceeding.

RELIEF REQUESTED

WHEREFORE, Registrant respectfully requests that this Petition for Cancellation proceeding be dismissed with prejudice.

Please recognize as attorneys for Registrant in this proceeding Thomas A. Zeigler, Robert A. Rivas, and Aileen M. Banellis, members of the Bar of the State of California, whose address is 1 MacArthur Place, Suite 200, Santa Ana, California 92707.

Respectfully submitted,

DATED: April 6, 2009

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

By: 

THOMAS A. ZEIGLER
Attorneys for Registrant,
LINDORA, INC.

Certificate of Service

I hereby certify that on this 6th day of April, 2009, the foregoing Answer to Petition for Cancellation was served, by mailing same by overnight mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Ryan M. Kaiser
AMIN HALLIHAN, LLC
444 N. Orleans St., Suite 400
Chicago, Illinois 60654



Thomas A. Zeigler