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

Proceeding	92051785
Party	Defendant Sunset Tan Corporate & Consulting, LLC
Correspondence Address	Sunset Tan Corporate & Consulting, LLC 10390 Santa Monica Blvd, Suite 310 Los Angeles, CA 90025 UNITED STATES lfisher@fisherzucker.com, jdunn@fisherzucker.com
Submission	Answer
Filer's Name	Lane J. Fisher
Filer's e-mail	lfisher@fisherzucker.com, jdunn@fisherzucker.com
Signature	/Lane J. Fisher/
Date	05/13/2011
Attachments	Answer to Petition to Cancel and Affirmative Defenses_filed 3-13-2011.pdf (6 pages)(29650 bytes)

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

SUNSETS TANNING SALON, INC.,	:	
	:	
	:	
Petitioner,	:	Cancellation No. 92051785
	:	Registration No. 3,593,880
v.	:	Mark: LA SUNSET TAN A HAMAN &
	:	BOZZ PRODUCTION
SUNSET TAN CORPORATE &	:	International Class 44
CONSULTING, LLC	:	
	:	
Registrant.	:	
	:	

**REGISTRANT’S ANSWER TO PETITIONER’S PETITION TO CANCEL
AND AFFIRMATIVE DEFENSES**

Registrant, Sunset Tan Corporate & Consulting, LLC (“Registrant”), by and through its attorneys, Fisher Zucker LLC, hereby answers the Petition to Cancel Registrant’s registered mark “LA SUNSET TAN A HAMAN & BOZZ PRODUCTION” (the “Registered Mark”) filed by Petitioner, Sunsets Tanning Salon, Inc. (“Petitioner”), as follows:

1. Admitted.
2. Admitted.
3. Admitted in part and denied in part. Registrant admits that Petitioner filed an application to register the mark “SUNSETS TANNING” (“Petitioner’s Mark”) on November 7, 2008, as shown in pending U.S. Application Serial No. 77/609,539. After reasonable investigation, Registrant is without knowledge sufficient to admit or deny the remaining averments contained in Paragraph 3 of Petitioner’s Petition to Cancel regarding Petitioner’s actual use of Petitioner’s Mark and the same are therefore denied.

4. Denied. After reasonable investigation, Registrant is without knowledge sufficient to admit or deny the averments contained in Paragraph 4 of Petitioner's Petition to Cancel and the same are therefore denied.

5. Admitted.

COUNT I – PRIORITY AND LIKELIHOOD OF CONFUSION

6. Paragraphs 1 through 5 above are hereby incorporated by reference as if set forth at length herein.

7. Denied. After reasonable investigation, Registrant is without knowledge sufficient to admit or deny the averments contained in Paragraph 7 of Petitioner's Petition to Cancel and the same are therefore denied.

8. Denied.

9. Denied. After reasonable investigation, Registrant is without knowledge sufficient to admit or deny the averments contained in Paragraph 9 of Petitioner's Petition to Cancel and the same are therefore denied.

10. Denied. After reasonable investigation, Registrant is without knowledge sufficient to admit or deny the averments contained in Paragraph 10 of Petitioner's Petition to Cancel and the same are therefore denied.

11. Denied. The averments contained in Paragraph 11 of Petitioner's Petition to Cancel state conclusions of law to which no response is required. To the extent that a response is required, Registrant is without knowledge sufficient to admit or deny the averments contained in Paragraph 11 of Petitioner's Petition to Cancel and the same are therefore denied.

12. Denied. The averments contained in Paragraph 12 of Petitioner's Petition to Cancel state conclusions of law to which no response is required. To the extent that a response is required, the same are specifically denied.

13. Denied. The averments contained in Paragraph 13 of Petitioner's Petition to Cancel state conclusions of law to which no response is required. To the extent that a response is required, the same are specifically denied.

14. Denied. The averments contained in Paragraph 14 of Petitioner's Petition to Cancel state conclusions of law to which no response is required. To the extent that a response is required, the same are specifically denied.

DAMAGES

15. Denied. The averments contained in Paragraph 15 of Petitioner's Petition to Cancel state conclusions of law to which no response is required. To the extent that a response is required, the same are specifically denied.

16. Admitted in part and denied in part. After reasonable investigation, Registrant understands that the Examining Attorney handling Petitioner's application to register the Pending Mark relied, in part, on U.S. Registration No. 3,593,880 as grounds for refusing registration of the Pending Mark under Section 2(d) of the Lanham Act. Registrant denies that the existence of U.S. Registration No. 3,593,880 is the only grounds for the Examining Attorney's refusal under Section 2(d) of the Lanham Act.

WHEREFORE, the Registrant, Sunset Tan Corporate & Consulting, LLC, respectfully requests that Petitioner Sunsets Tanning Salon, Inc.'s Petition to Cancel be denied and all other relief as this Board deems necessary and just.

AFFIRMATIVE DEFENSES

Registrant reserves the right to assert any and all applicable defenses to Petitioner's claims. Registrant has not yet obtained discovery from Petitioner or from third parties in connection with this action, and Registrant reserves the right to amend or otherwise supplement this pleading on that basis. Without limiting the generality of the foregoing and without regard to whether the defenses set forth below are affirmative defenses within the meaning of Fed. R. Civ. P. 8(c), and without conceding that any such defense must be set forth in its Answer, Registrant states as follows:

FIRST AFFIRMATIVE DEFENSE

Petitioner failed to raise its various claims of likelihood of confusion between Petitioner's Mark and the Registered Mark during the statutory publication period and for an unreasonable and unjustifiable time period thereafter, despite the fact that Petitioner had actual and constructive knowledge of Registrant's mark on the Principal Register of the USPTO. Petitioner was put on notice of the Registered Mark when the Registered Mark was published on January 6, 2009. Petitioner's lack of diligence in failing to institute its action over the course of nearly a year results in prejudice to Defendant. Accordingly, Petitioner's Petition to Cancel is barred by the doctrine of laches.

WHEREFORE, the Registrant, Sunset Tan Corporate & Consulting, LLC respectfully requests that Petitioner Sunsets Tanning Salon, Inc.'s Petition to Cancel be denied and all other relief as this Board deems necessary and just.

FISHER ZUCKER LLC

Dated: May 13, 2011

By: /s/ Lane Fisher
Lane Fisher, Esq.
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Philadelphia, Pennsylvania 19103
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Attorney for Registrant

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SUNSETS TANNING SALON, INC.,	:	
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Petitioner,	:	Cancellation No. 92051785
	:	Registration No. 3,593,880
v.	:	Mark: LA SUNSET TAN A HAMAN &
	:	BOZZ PRODUCTION
SUNSET TAN CORPORATE &	:	International Class 44
CONSULTING, LLC	:	
	:	
Registrant.	:	
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2011, I caused a true and correct copy of the foregoing **Registrant's Answer and Affirmative Defenses** to be sent to Petitioner's counsel via electronic mail to MDB@mhdpatents.com and also via first class mail to the following address:

Mr. Mark Bowen, Esq.
Malin Haley DiMaggio Bowen & Lhota, PA
1936 South Andrews Avenue
Fort Lauderdale, FL 33316

Respectfully Submitted,

FISHER ZUCKER LLC

By: _____

William R. Graefe