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Filing date: **05/21/2010**

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

Proceeding	92051832
Party	Defendant MONTANI COSMETICS INC
Correspondence Address	Charles T. Riggs Jr. PATULA & ASSOCIATES, P.C. 116 S. Michigan Avenue, 14th Floor CHICAGO, IL 60603 UNITED STATES riggs@patula.com
Submission	Answer
Filer's Name	Charles T. Riggs Jr.
Filer's e-mail	riggs@patula.com
Signature	/Charles T. Riggs Jr./
Date	05/21/2010
Attachments	Montani Answer and Affirmative Defenses.pdf (5 pages)(264500 bytes)

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

Merz Pharmaceuticals, LLC and)	
Merz, Incorporated)	
)	
Petitioner,)	
)	Cancellation No. 92051832
v.)	
)	Reg. No. 3,608,042
Montani Cosmetics Inc.,)	
)	
Registrant.)	
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER AND AFFIRMATIVE DEFENSES

Registrant, Montani Cosmetics Inc., by and through its undersigned attorney, for its Answer and Affirmative Defenses to Petitioners’ Amended Petition for Cancellation (“Petition”), respectfully states as follows:

GENERAL DENIAL

Any statement of Petitioners in its Petition not specifically addressed and admitted is denied.

ANSWER TO NUMBERED PARAGRAPHS

1. Admitted.
2. Registrant is without sufficient information to form a belief as to the truth of the allegation of paragraph number 2, and therefore denies the allegation.
3. Registrant is without sufficient information to form a belief as to the truth of the allegation of paragraph number 3, and therefore denies the allegation.

4. Registrant is without sufficient information to form a belief as to the truth of the allegation of paragraph number 4, and therefore denies the allegation.
5. Registrant is without sufficient information to form a belief as to the truth of the allegation of paragraph number 5, and therefore denies the allegation.
6. Registrant is without sufficient information to form a belief as to the truth of the allegation of paragraph number 6, and therefore denies the allegation.
7. Denied.
8. Denied.
9. Subject to Registrant's pending Motion to Strike, denied.

AFFIRMATIVE DEFENSES

1. Registrant's use of its MEDERMIS mark has not caused and is not likely to cause confusion, mistake, or to deceive the public that the goods under the MEDERMIS registration emanate from or are otherwise sponsored by or endorsed by Petitioners.
2. Petitioners have not been and will not be damaged by the MEDERMIS registration.
3. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the doctrine of *stare decisis*.
4. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the equitable doctrine of estoppel.
5. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the equitable doctrine of acquiescence.
6. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the equitable doctrine of laches.

7. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the equitable doctrine of stale demands.

8. Petitioners' Petition is barred, insupportable or otherwise fatally flawed under the equitable doctrine of unclean hands.

9. Petitioners' Petition should be dismissed as a sanction in view of Petitioners' bad faith settlement negotiations.

10. Petitioners are officious intermeddlers who are misusing the TTAB proceedings and who are using Petitioners' far superior financial means in an attempt to improperly cancel the MEDERMIS registration.

11. Petitioners' Petition is frivolous and sanctionable pursuant to Rule 11 of the Federal Rules of Civil Procedure and applicable TTAB rules.

PRAYER FOR RELIEF

WHEREFORE, Registrant prays that the TTAB enter judgment against Petitioners as follows:

- A. Dismissing Petitioners' Petition with prejudice;
- B. Denying Petitioners' requested relief;
- C. Declaring that the MEDERMIS registration has not caused and is not likely to cause confusion, mistake, or to deceive the public with respect to Petitioners' marks;
- D. Declaring that Petitioners are not damaged and will not be damaged by the MEDERMIS registration;

E. Declaring that Petitioners are barred from any and all relief under the doctrines of *stare decisis*, estoppel, acquiescence, laches, stale demands, unclean hands and/or bad faith settlement negotiations;

F. Declaring that Petitioners' Petition is frivolous, sanctionable or otherwise improper under Fed. R. Civ. P. 11 and applicable TTAB rules;

G. Awarding Registrant any and all appropriate relief as the TTAB deems just and proper.

Respectfully submitted,

PATULA & ASSOCIATES, P.C.

Dated: May 21, 2010

By: /Charles T. Riggs Jr./
Charles T. Riggs Jr.
Attorney for Registrant

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Registrant's ANSWER AND AFFIRMATIVE DEFENSES was served upon Petitioners by depositing a copy with the United States Postal Service as first class mail, postage paid, in an envelope addressed to Lile H. Deinard, Esq., DORSEY & WHITNEY LLP, 250 Park Avenue, New York, New York 10177, this 21st day of May, 2010.

/Charles T. Riggs Jr./

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