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

Proceeding	92052908
Party	Defendant Joseph J. Norton
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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: **TRIUMBARI CORPORATION,** : **Cancellation No. 92052908**
: **Petitioner,** :
: :
: :
: **v.** :
: :
: **JOSEPH J. NORTON,** :
: **Registrant.** :
: :
-----X

ANSWER TO AMENDED PETITION FOR CANCELLATION

Registrant, JOSEPH J. NORTON (“Registrant”), for his Answer to the Amended Petition for Cancellation filed by Petitioner, TRIUMBARI CORPORATION (“Petitioner”), alleges as follows:

ANSWER

1. In response to the allegations set forth in paragraph 1 of the Amended Petition for Cancellation, Registrant asserts that paragraph 1 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 1 of the Amended Petition for Cancellation.

2. In response to the allegations set forth in paragraph 2 of the Amended Petition for Cancellation, Registrant admits that in 2010, he and his related company, Bug Juice Brands, Inc., instituted an action entitled, *Bug Juice Brands, Inc. and Joseph J. Norton v. Great Lakes Bottling Company* (“Great Lakes”), Civil Action No. 1:10-cv-229 (PLM) (W.D. Mich.) (“Federal Action”). On June 2, 2010, the Honorable Paul L. Maloney conducted a hearing on Plaintiffs’ motion for a preliminary injunction in the Federal Action. In issuing the preliminary injunction against Great Lakes, the Court observed that the defense mounted by Great Lakes was “sanctionable.” The parties in the Federal Action entered into a Final Judgment on Consent and Injunction on June 10, 2010. Registrant denies the remaining allegations set forth in paragraph 2 of the Amended Petition for Cancellation.

3. In response to the allegations set forth in paragraph 3 of the Amended Petition for Cancellation, Registrant admits that the trade dress that formed the basis for the claims in the Federal Action is the subject of U.S. Registration No. 3,323,848. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 3 of the Amended Petition for Cancellation, and, therefore, denies same.

4. Registrant admits the allegations set forth in paragraph 4 of the Amended Petition for Cancellation.

5. Registrant admits the allegations set forth in paragraph 5 of the Amended Petition for Cancellation.
6. Registrant admits the allegations set forth in paragraph 6 of the Amended Petition for Cancellation.
7. In response to paragraph 7 of the Amended Petition for Cancellation, Registrant affirmatively states that his Registration No. 3,323,848 speaks for itself and denies the allegations set forth in paragraph 7 to the extent that they are inconsistent with the same.
8. In response to the allegations set forth in paragraph 8 of the Amended Petition for Cancellation, Registrant asserts that paragraph 8 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 8 of the Amended Petition for Cancellation.
9. Registrant denies the allegations set forth in paragraph 9 of the Amended Petition for Cancellation.
10. In response to paragraph 10 of the Amended Petition for Cancellation, Registrant affirmatively states that his Registration No. 3,323,848 speaks for itself and denies the allegations set forth in paragraph 10 to the extent that they are inconsistent with the same.

11. Registrant denies the allegations set forth in paragraph 11 of the Amended Petition for Cancellation.
12. In response to the allegations set forth in paragraph 12 of the Amended Petition for Cancellation, Registrant admits that his BUG JUICE[®] mark is distinctive and denies the remaining allegations set forth therein.
13. In response to paragraph 13 of the Amended Petition for Cancellation, Registrant affirmatively states that his Registration No. 3,323,848 speaks for itself and denies the allegations set forth in paragraph 13 to the extent that they are inconsistent with the same.
14. Registrant denies the allegations set forth in paragraph 14 of the Amended Petition for Cancellation.
15. In response to the allegations set forth in the first sentence of paragraph 15 of the Amended Petition for Cancellation, Registrant affirmatively states that his Registration No. 3,323,848 speaks for itself and denies the allegations set forth in the first sentence of paragraph 15 to the extent that they are inconsistent with the same. Registrant denies the remaining allegations set forth in paragraph 15 of the Amended Petition for Cancellation.
16. In response to the allegations set forth in the first sentence of paragraph 16 of the Amended Petition for Cancellation, Registrant affirmatively states that his Registration No. 3,323,848 speaks for itself and denies the allegations set forth in the first sentence of

paragraph 16 to the extent that they are inconsistent with the same. Registrant denies the remaining allegations set forth in paragraph 16 of the Amended Petition for Cancellation.

17. Registrant denies the allegations set forth in paragraph 17 of the Amended Petition for Cancellation.
18. In response to the allegations set forth in paragraph 18 of the Amended Petition for Cancellation, Registrant asserts that paragraph 18 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 18 of the Amended Petition for Cancellation.
19. In response to the allegations set forth in paragraph 19 of the Amended Petition for Cancellation, Registrant asserts that paragraph 19 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 19 of the Amended Petition for Cancellation.
20. In response to the allegations set forth in paragraph 20 of the Amended Petition for Cancellation, Registrant asserts that paragraph 20 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 20 of the Amended Petition for Cancellation.

21. In response to the allegations set forth in paragraph 21 of the Amended Petition for Cancellation, Registrant asserts that paragraph 21 consists of argument of counsel and not facts and, therefore, no response thereto is required. To the extent that a response is deemed to be required, Registrant denies the allegations set forth in paragraph 21 of the Amended Petition for Cancellation.
22. Registrant denies the allegations set forth in paragraph 22 of the Amended Petition for Cancellation.
23. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Amended Petition for Cancellation, and, therefore, denies same.
24. Registrant denies the allegations set forth in paragraph 24 of the Amended Petition for Cancellation.
25. Registrant denies the allegations set forth in paragraph 25 of the Amended Petition for Cancellation.
26. Registrant admits the allegations set forth in the first sentence of paragraph 26 of the Amended Petition for Cancellation. Registrant denies the allegations set forth in the second sentence of paragraph 26 of the Amended Petition for Cancellation. In response to the allegations set forth in the third sentence of paragraph 26 of the Amended Petition

for Cancellation, Registrant admits that he submitted a declaration during the course of the prosecution of his Application Serial No. 78/537,703, which matured into the subject Registration No. 3,323,848, which declaration speaks for itself. Registrant denies the remaining allegations set forth in the third sentence of paragraph 26 of the Amended Petition for Cancellation.

27. Registrant denies the allegations set forth in paragraph 27 of the Amended Petition for Cancellation.

28. Registrant denies the allegations set forth in paragraph 28 of the Amended Petition for Cancellation.

29. Registrant denies the allegations set forth in paragraph 29 of the Amended Petition for Cancellation.

30. In response to the allegations set forth in paragraph 30 of the Amended Petition for Cancellation, Registrant admits that he submitted a response to an office action issued by the Examining Attorney assigned to Application Serial No. 78/537,703, which matured into the subject Registration No. 3,323,848, which response speaks for itself. Registrant denies the remaining allegations set forth in paragraph 30 of the Amended Petition for Cancellation.

31. In response to the allegations set forth in paragraph 31 of the Amended Petition for Cancellation, Registrant admits that he submitted a response to an office action issued by the Examining Attorney assigned to Application Serial No. 78/537,703, which matured into the subject Registration No. 3,323,848, which response speaks for itself. Registrant denies the remaining allegations set forth in paragraph 31 of the Amended Petition for Cancellation.
32. Registrant denies the allegations set forth in paragraph 32 of the Amended Petition for Cancellation.
33. Registrant denies the allegations set forth in paragraph 33 of the Amended Petition for Cancellation.
34. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the Amended Petition for Cancellation, and, therefore, denies same.
35. Registrant denies the allegations set forth in paragraph 35 of the Amended Petition for Cancellation.
36. Registrant denies the allegations set forth in paragraph 36 of the Amended Petition for Cancellation and specifically denies that the Examining Attorney was not aware of all

statements of fact made by Registrant in connection with the prosecution of Application Serial No. 78/537,703.

37. Registrant denies the allegations set forth in paragraph 37 of the Amended Petition for Cancellation.

FIRST AFFIRMATIVE DEFENSE

38. The Amended Petition for Cancellation fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

39. Petitioner does not have standing to bring and maintain this action.
40. Petitioner is a mere intermeddler who did not properly allege and cannot establish that it has the requisite standing to bring and maintain this action.
41. The Federal Action upon which Petitioner exclusively relies as grounds for asserting standing in this action was dismissed two years ago in favor of Registrant.
42. Contrary to its allegations in the Amended Petition for Cancellation, Petitioner has done nothing to “challenge the injunction” issued in the Federal Action over the past two years.

43. Contrary to its allegations in the Amended Petition for Cancellation, Petitioner has done nothing to “seek a declaration of” invalidity of Registrant’s Registration No. 3,323,848 from any federal court over the past two years.

44. Upon information and belief, at the time of filing its Amended Petition for Cancellation, Petitioner had no intention of “challeng[ing] the injunction” issued in the Federal Action or “seek[ing] a declaration of invalidity” of Registrant’s Registration No. 3,323,848 in any federal court. Upon further information and belief, as of today’s date, Petitioner has no such intention.

THIRD AFFIRMATIVE DEFENSE

45. Petitioner’s claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

46. Petitioner’s claims are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

47. Petitioner’s claims and request for relief are barred by the doctrine of unclean hands.

48. The Court in the Federal Action found that Great Lakes, Petitioner’s co-infringer, was a knowing and willful infringer of Registrant’s federally registered trade dress rights.

49. Petitioner claims that it manufactured the infringing bottles for distribution by Great Lakes, a knowing and willful infringer.
50. Upon information and belief, Petitioner manufactured the bottles that infringed Registrant's federally registered trade dress rights in concert with Great Lakes, with the intention of infringing upon Registrant's rights and causing confusion in the marketplace.
51. In the alternative, upon information and belief, Registrant manufactured the bottles that infringed Registrant's federally registered trade dress rights at the direction of Great Lakes and with full knowledge that it was infringing upon Registrant's rights.
52. Under either factual scenario, Petitioner's claims and request for relief in this action are barred by the doctrine of unclean hands.

WHEREFORE, Registrant requests that the Board dismiss the Amended Petition for Cancellation with prejudice.

Dated: May 30, 2012

Respectfully submitted,

By: /S/
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Attorneys for Registrant
JOSEPH J. NORTON

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2012, a copy of the foregoing Answer to Amended Petition for Cancellation was served duly served on counsel for Petitioner by depositing same with the U.S. Postal Service as first class prepaid mail in an envelope addressed as follows:

Camille M Miller, Esq.
Cozen O'Connor, PC
1900 Market Street
Philadelphia, PA 19103



Denise Bolden