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

Proceeding	92053030
Party	Defendant Insight Pharmaceuticals LLC
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Submission	Answer
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Date	11/29/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

JEFFREY KAPLAN,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92053030
)	
INSIGHT PHARMACEUTICALS, LLC)	Registration No. 792,115
)	
Registrant.)	
)	
)	
)	

REGISTRANT’S ANSWER TO PETITION FOR CANCELLATION

COMES NOW Registrant Insight Pharmaceuticals, LLC, (“Registrant”) and for its Answer to the Petition for Cancellation (the "Petition"), submits the following:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 1 of the Petition and, therefore, denies such allegations. Registrant admits the remaining allegations of paragraph 1 of the Petition.
2. Registrant denies the truth of the allegations contained in paragraph 2 of the Petition.
3. With regard to the allegations contained in paragraph 3 of the Petition, Registrant is without knowledge or information sufficient to form a belief as to the truth of Petitioner’s allegations that he “believes [sic] is or will be damaged by Registrant’s U.S. Trademark Registration No: 792,115 for the mark ‘ASPERGUM’ for Chewing Gum Containing Aspirin.” Registrant, however, denies the truth of the explicit or implicit allegation contained in paragraph

9 of the Petition that Petitioner will be damaged by Registrant's U.S. Trademark Registration No: 792,115 for the mark 'ASPERGUM' for Chewing Gum Containing Aspirin.

4. Registrant is without knowledge or information sufficient of Petitioner's allegations in paragraph 4 of the Petition that he "believes is, or will be, damaged" by Registrant's U.S. Trademark Registration No: 792,115 for the mark ASPERGUM Registrant, however, denies the truth of the explicit or implicit allegation contained in paragraph 4 of the Petition that Petitioner will be damaged by Registrant's U.S. Trademark Registration No: 792,115 for the mark 'ASPERGUM' for Chewing Gum Containing Aspirin. Registrant further denies that cancellation of Registration No. 792,115 is appropriate.

5. Registrant denies the truth of the allegations contained in paragraph 5 of the Petition.

6. Registrant denies the truth of the allegations contained in paragraph 6 of the Petition.

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition and, therefore, denies such allegations.

8. Registrant denies that Petitioner is entitled to concurrent use and registration as Petitioner implies in paragraph 8 of the Petition. Further, Registrant denies Petitioner's allegation contained in paragraph 9 of the Petition that he will suffer harm to his reputation and/or goodwill if Registrant's Registration No. 792,115 is not cancelled.

9. With regard to the allegations contained in paragraph 9 of the Petition, Registrant admits that Petitioner's Application Serial No. 85126700 and Registrant's Registration No. 792,115 both cover the mark "ASPERGUM". Registrant lacks knowledge and information

sufficient to know if the goods identified in Petitioner's Application Serial No. 85126700 and Registrant's Registration No. 792,115 are "nearly the same goods" and, therefore, denies such allegation.

10. Registrant denies the truth of the allegations contained in Paragraph 10 of the Petition.

11. Any allegations contained in the Petition that are not expressly admitted are hereby expressly denied.

12. The remainder of the Petition being merely a request for relief requires no response. Notwithstanding, Registrant denies that Petitioner is entitled to any of the relief requested in the Petition including, but not limited to, cancellation of Registration No. 792,115. Further, Registrant also has not identified any basis for cancellation of Registration No. 786,098 for "FUNNY-FACE" as requested in the last paragraph of the Petition and, therefore, such request should be denied.

AFFIRMATIVE DEFENSES

1. Petitioner has not and will not be damaged by Registration No. 792,115 for the trademark ASPERGUM and, therefore, lacks standing to petition to cancel Registration No. 792,115.

2. Registrant has not abandoned the ASPERGUM® trademark.

3. As shown by Petitioner's long-history of "squatting" on other well-known marks (such as the marks "BOWERY BOY" and "FUNNY-FACE"), Petitioner does not have an actual intent to use the mark in commerce.

4. Petitioner has not and will not suffer damage or harm by Registration No. 792,115 remaining on the Principal Register.

WHEREFORE, Registrant respectfully requests that the Petition be dismissed with prejudice.

Respectfully submitted,

/Samuel F. Miller/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via first class mail to Jeffrey Kaplan, PO Box 11106, Ft. Lauderdale, FL 33339, this 29th day of November 2010.

/Samuel F. Miller/