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Filing date: **10/18/2011**

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

Proceeding	92054472
Party	Defendant Fizzy, LLC
Correspondence Address	FIZZY LLC 1504 BAY ROAD, APT 3105 MIAMI BEACH, FL 33139 UNITED STATES
Submission	Answer
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Date	10/18/2011
Attachments	Alticor v Fizzy Answer.pdf (4 pages)(89722 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ALTICOR, INC.,	:	
	:	Cancellation No. 92054472
Petitioner,	:	
	:	
-against-	:	Registration No.: 3,839,362
	:	
FIZZY, LLC,	:	Mark: NUTRALIFE
	:	
Registrant.	:	Registered: August 24, 2010
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ANSWER TO PETITION FOR CANCELLATION

Registrant Fizzy, LLC (“Fizzy”), by way of Answer to the Petition for Cancellation filed herein, responds as follows:

1. Answering Paragraph 1, Fizzy is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

2. Answering Paragraph 2, Fizzy states that at the time that it filed Application No. 78/706,961 with the United States Patent and Trademark Office (the “PTO”) to register the mark NUTRALIFE (the “Application”), Fizzy had not yet made use in commerce of the mark NUTRALIFE. Fizzy denies the remaining allegations of Paragraph 2.

3. Answering Paragraph 3, Fizzy is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

4. Answering Paragraph 4, Fizzy is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

5. Answering Paragraph 5, Fizzy states that Fizzy filed the Application with the PTO on September 6, 2010, and that Fizzy now owns U.S. Registration No. 3,839,362 for the mark NUTRALIFE in connection with “herbal supplements,” in Class 5 (the “Registration”). Fizzy denies the remaining allegations of Paragraph 5.

6. Fizzy denies the allegations of Paragraph 6.

7. Fizzy denies the allegations of Paragraph 7.

FIRST AFFIRMATIVE DEFENSE

The Petition to Cancel fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Petitioner lacks standing to bring a cause of action for cancellation of Fizzy’s Registration.

THIRD AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception of the public between the Petitioner’s mark and the mark that is the subject of the Registration.

FOURTH AFFIRMATIVE DEFENSE

Fizzy’s products bearing the NUTRALIFE mark travel in different channels of trade than Petitioner’s products, thereby making confusion unlikely.

FIFTH AFFIRMATIVE DEFENSE

Laches bars Petitioner's claims and Petitioner is estopped from seeking cancellation of Fizzy's Registration.

WHEREFORE, Fizzy requests that the Petition for Cancellation be dismissed with prejudice and with costs awarded in favor of Fizzy.

Dated: October 18, 2011

McCARTER & ENGLISH, LLP

By: 

Robert W. Smith

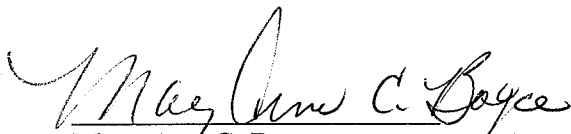
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100 Mulberry Street
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Attorneys for Fizzy, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing, ANSWER TO PETITION FOR CANCELLATION, has been served upon Petitioner by first class mail, postage prepaid at the following address:

Jeffrey A. Handelman
Brinks Hofer Gilson & Lione
455 N. Cityfront Plaza Drive
Chicago, IL 60610


Mary Ann C. Boyce