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

Proceeding	92055932
Party	Defendant Eli Gershkovitch
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Attachments	Answer to Petition for Cancellation - NITRO.pdf (5 pages)(147233 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Indian Peaks Brewing Company	:	
d/b/a Left Hand Brewing Company	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92055932
	:	
Eli Gershkovitch	:	
	:	
Registrant.	:	

ANSWER TO PETITION FOR CANCELLATION

Registrant, Eli Gershkovitch ("Registrant"), hereby responds to the numbered allegations in Indian Peaks Brewing Company d/b/a Left Hand Brewing Company's ("Petitioner") Petition for Cancellation.

1. Registrant admits that Eli Gershkovitch is the current owner of Registration No. 2,946,361—NITRO. Registrant's current address is SB-54 601 West Cordova Street Vancouver, British Columbia V6B 1G1, Canada.

2. Registrant admits that its U.S. Registration No. 2,946,361—NITRO is valid and subsisting and speaks for itself with respect to the information contained therein.

3. Registrant lacks sufficient knowledge to form a belief as to the allegations in Paragraph 3 and therefore denies the same.

4. Registrant lacks sufficient knowledge to form a belief as to the allegations in Paragraph 4 and therefore denies the same.

5. Registrant admits that the U.S. Patent and Trademark Office records reflect the allegations contained in Paragraph 5.

6. Registrant admits that the U.S. Patent and Trademark Office records reflect that its U.S. Registration No. 2,946,361—NITRO was cited against Petitioner's abandoned U.S. Application Serial No. 85/383,412.

7. Registrant admits that the U.S. Patent and Trademark Office records reflect the allegations contained in Paragraph 7.

8. Registrant denies the allegations in Paragraph 8.

9. Registrant lacks sufficient knowledge to form a belief as to the allegations in Paragraph 9 and therefore denies the same.

10. Registrant denies the allegations in Paragraph 10.

**COUNT I: FRAUDULENTLY OBTAINED AND MAINTAINED
REGISTRATION**

11. Registrant reasserts and realleges its responses to the allegations set forth in the preceding paragraphs.

12. Registrant denies the allegations in Paragraph 12.

13. Registrant admits that the website www.steamworks.com is owned and operated by Registrant.

14. Registrant admits that the website www.steamworks.com does not include use of the NITRO trademark.

15. Registrant admits that the website www.steamworks.com includes the "Gastown drink list," which is available for download in .PDF format.

16. Registrant admits that the "Gastown drink list" does not include use of the NITRO trademark.

17. Registrant denies the allegations in Paragraph 17.
18. Registrant denies the allegations in Paragraph 18.
19. Registrant denies the allegations in Paragraph 19.
20. Registrant denies the allegations in Paragraph 20.
21. Registrant lacks sufficient knowledge to form a belief as to Petitioner's first use date of "Milk Stout Nitro" and therefore denies the same. Registrant denies the remaining allegations in Paragraph 21.

COUNT II: ABANDONMENT

22. Registrant reasserts and realleges its responses to the allegations set forth in the preceding paragraphs.
23. Registrant admits that the website www.steamworks.com is owned and operated by Registrant.
24. Registrant admits that the website www.steamworks.com does not include use of the NITRO trademark.
25. Registrant admits that the website www.steamworks.com includes the "Gastown drink list," which is available for download in .PDF format.
26. Registrant admits that the "Gastown drink list" does not include use of the NITRO trademark.
27. Registrant denies the allegations in Paragraph 27.
28. Registrant denies the allegations in Paragraph 28.
29. Registrant denies the allegations in Paragraph 29.

30. Registrant lacks sufficient knowledge to form a belief as to Petitioner's first use date of "Milk Stout Nitro" and therefore denies the same. Registrant denies the remaining allegations in Paragraph 30.

Registrant further denies that Petitioner is entitled to the relief requested.

AFFIRMATIVE DEFENSES

1. Registrant has continuously used the NITRO mark in commerce since November 30, 2004.
2. Petitioner's U.S. Application Serial No. 85/383,412, in International Class 32, was filed on an intent-to-use basis. This application, and the declaration that accompanies it, constitutes an admission that Petitioner had not used "Milk Stout Nitro" in connection with the goods therein prior to the July 28, 2011 filing date. This contradicts Petitioner's claim that it has been using "Milk Stout Nitro" since 2009.
3. Petitioner's claims are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

WHEREFORE, Registrant requests that the Cancellation proceeding be dismissed with prejudice, and for all other relief that the Board may deem just and proper.

Respectfully submitted,

ELI GERSHKOVITCH

By:



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Date: September 7, 2012

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER TO PETITION FOR CANCELLATION was served on counsel for Petitioner, this 7th day of September, 2012 by first-class mail, postage prepaid, on:

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