

ESTTA Tracking number: **ESTTA512207**

Filing date: **12/20/2012**

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

Proceeding	92056442
Party	Defendant Aunties Bambino
Correspondence Address	AUNTIES BAMBINO 5924 NEW HAVEN DRIVE PLANO, TX 75093 UNITED STATES
Submission	Answer
Filer's Name	John Lindsay
Filer's e-mail	ipprosecution@startuippservices.com
Signature	/John Lindsay/
Date	12/20/2012
Attachments	kiddieKollegePetToCanc_answerToPetition01.pdf (8 pages)(72659 bytes)

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

ESSENTIAL BRANDS, INC.,	Cancellation No.: 92056442
Petitioner,	In re Registration No.: 3,341,061
v.	Registered: November 20, 2007
	Mark: Kiddie Kollege
AUNTIE'S BAMBINO, INC.,	
Registrant.	

**RESPONDENT'S ANSWER TO PETITIONER'S
PETITION TO CANCEL**

In response to the Petition to Cancel issued by the Board on November 14, 2012, Auntie's Bambino, Inc. ("Auntie's Bambino") hereby responds to Essential Brands, Inc. ("Petitioner") as follows:

1. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 1 of the Petition to Cancel, and therefore denies same.
2. Auntie's Bambino admits that Respondent is Auntie's Bambino, Inc., a Texas corporation with an address of record at 5924 New Haven Drive, Plano, Texas 75093.
3. Auntie's Bambino admits Petitioner is the listed owner of U.S. Trademark Registration No. 2262940, registered July 20, 1999 for the mark KIDDIE ACADEMY & Design for use with Child day care center services, in Class 42, claiming a date of first use at least as early as June 30, 1985 and that the United States Patent & Trademark Office (USPTO) has accepted declarations under Section 15 of the Trademark Act, but lacks knowledge of the remaining facts and therefore denies the same.

4. Auntie's Bambino admits Petitioner is the listed owner of U.S. Trademark Registration No. 2585170, registered June 25, 2002 for the mark KIDDIE ACADEMY for use with Child day care center services, in Class 42, claiming a date of first use at least as early as June 30, 1985 and that the USPTO has accepted declarations under Section 15 of the Trademark Act, but lacks knowledge of the remaining facts and therefore denies the same.

5. Auntie's Bambino admits Petitioner is the listed owner of U.S. Trademark Registration No. 4224097, registered October 16, 2012 for the mark KIDDIE for use with, inter alia, Franchise services, namely, offering business management assistance in the establishment and operation of educational centers and programs; Franchise services, namely, offering business management assistance in the establishment and operation of child care centers, in Class 35, claiming a date of first use at least as early as October 1, 1991, Education services, namely, providing academic guidance and early childhood instruction to pre-school age children in math, science, social studies, language arts, physical education, creative arts and character education; Summer camps; Summer camp programs providing educational services, field trips, social activities and extracurricular activities for school-age children in reading, writing, science, math, music, sports and art; Before and after school educational programs providing supervised homework and extracurricular activities for school-age children in reading, writing, science, math, music, sports, and art; education services in the nature of early childhood instruction; nursery schools providing age-appropriate learning curriculum; charitable services, namely, providing books to underprivileged children; Providing links to an online library of websites featuring educational programs of others in the fields of parenting, early childhood and school-age educational programs, in Class 41, claiming a date of first use at least as early as June 30, 1985, and Child

care; Child day care center services; Providing information in the field of child care and child day care center, in Class 42, claiming a date of first use at least as early as June 30, 1985.

6. Auntie's Bambino admits Petitioner is the listed owner of U.S. Trademark Registration No. 4224098, registered October 16, 2012 for the mark KIDDIE ACADEMY & Design for use with, inter alia, Franchise services, namely, offering business management assistance in the establishment and operation of educational centers and programs; Franchise services, namely, offering business management assistance in the establishment and operation of child care centers, in Class 35, claiming a date of first use at least as early as October 1, 1991, and Education services, namely, providing academic guidance and early childhood instruction to pre-school age children in math, science, social studies, language arts, physical education, creative arts and character education; Summer camps; Summer camp programs providing educational services, field trips, social activities and extracurricular activities for school-age children in reading, writing, science, math, music, sports and art; Before and after school educational programs providing supervised homework and extracurricular activities for school-age children in reading, writing, science, math, music, sports, and art; education services in the nature of early childhood instruction; nursery schools providing age-appropriate learning curriculum; charitable services, namely, providing books to underprivileged children; Providing links to an online library of websites featuring educational programs of others in the fields of parenting, early childhood and school-age educational programs, in Class 41, claiming a date of first use at least as early as June 30, 1985.

7. Auntie's Bambino admits Petitioner is the listed owner of U.S. Trademark Registration No. 4224099, registered October 16, 2012 for the mark KIDDIE ACADEMY for use with, inter alia, Franchise services, namely, offering business management assistance in the establishment and operation of educational centers and programs; Franchise services, namely, offering business management assistance in the establishment and operation of child care centers, in Class 35, claiming a date of first use at least as early as October 1, 1991, and Education services, namely, providing academic guidance and early childhood instruction to pre-school age children in math, science, social studies, language arts, physical education, creative arts and character education; Summer camps; Summer camp programs providing educational services, field trips, social activities and extracurricular activities for school-age children in reading, writing, science, math, music, sports and art; Before and after school educational programs providing supervised homework and extracurricular activities for school-age children in reading, writing, science, math, music, sports, and art; education services in the nature of early childhood instruction; nursery schools providing age-appropriate learning curriculum; charitable services, namely, providing books to underprivileged children; Providing links to an online library of websites featuring educational programs of others in the fields of parenting, early childhood and school-age educational programs, in Class 41, claiming a date of first use at least as early as June 30, 1985.

8. Auntie's Bambino admits the allegations of Paragraph 8 of the Petition to Cancel.

9. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 9 of the Petition to Cancel, and therefore denies same.

10. Auntie's Bambino repeats its responses to the above numbered paragraphs.

11. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 11 of the Petition to Cancel, and therefore denies same.

12. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 12 of the Petition to Cancel, and therefore denies same.

13. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 13 of the Petition to Cancel, and therefore denies same.

14. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 14 of the Petition to Cancel, and therefore denies same.

15. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 15 of the Petition to Cancel, and therefore denies same.

16. Auntie's Bambino is without knowledge or information sufficient to form a belief as to the truth of the matters asserted Paragraph 16 of the Petition to Cancel, and therefore denies same.

17. Auntie's Bambino denies the allegations of Paragraph 17 of the Petition to Cancel.

18. Auntie's Bambino denies the allegations of Paragraph 18 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

In further answer to the Petition to Cancel, Auntie's Bambino asserts that:

FIRST AFFIRMATIVE DEFENSE

The terms of Petitioner's listed registrations are highly diluted as a trademark formative, and hence weak, and Petitioner's purported rights extend no further than to the specific marks which Petitioner alleges it owns, none of which are the same as or confusingly similar to Auntie's Bambino's mark in terms of connotation, appearance and/or pronunciation.

SECOND AFFIRMATIVE DEFENSE

Auntie's Bambino's use of its mark will not mistakenly be thought by the public to derive from the same source as Petitioner's services, nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval.

THIRD AFFIRMATIVE DEFENSE

Auntie's Bambino's mark in its entirety is sufficiently distinctively different from Petitioner's marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Auntie's Bambino's services.

FOURTH AFFIRMATIVE DEFENSE

Auntie's Bambino's mark, when used on Auntie's Bambino's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Auntie's Bambino with Petitioner, or as to the origin, sponsorship, or approval of Auntie's Bambino's services by Petitioner.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by laches, as Petitioner's delay has been unreasonable and would materially prejudice Auntie's Bambino.

SIXTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by acquiescence, as Petitioner's purposeful delay has been unreasonable and would materially prejudice Auntie's Bambino.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred under equitable estoppel.

RELIEF REQUESTED

WHEREFORE, Auntie's Bambino respectfully requests that this cancellation proceeding be dismissed, with prejudice.

Dated: December 20, 2012

Respectfully submitted,
Lindsay Law
by: /John Lindsay/ _____
John Lindsay
11700 Preston Rd Ste 660-167
Dallas, TX 75230
214-736-4306 (Phone)
ipprosecution@startupipservices.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Petition to Cancel was served on December 20, 2012, via first-class mail, postage prepaid, on:

NIXON PEABODY LLP
Jeffrey S. Molinoff
401 9th Street, N.W., Suite 900
Washington, D.C. 20004-2128

—/John Lindsay/—
John Lindsay