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

Proceeding	92056644
Party	Defendant Infinite Jewelry Co. L.L.C.
Correspondence Address	SHELLI ASHTON INFINITE JEWELRY CO LLC 2321 E RUSTIC DR ST GEORGE, UT 84790 UNITED STATES
Submission	Answer and Counterclaim
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Signature	/R. Brett Evanson/
Date	02/20/2013
Attachments	2013-2-19 Answer and Counterclaim.pdf (9 pages)(119445 bytes)

Registrations Subject to the filing

Registration No	4222783	Registration date	10/09/2012
Registrant	Summit Entertainment, LLC 2700 Colorado Avenue, 2nd Floor Santa Monica, CA 90404 UNITED STATES		

Goods/Services Subject to the filing

Class 014. First Use: 2012/06/03 First Use In Commerce: 2012/06/03 Requested goods and services in the class: Jewelry and jewelry boxes
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Registration No	3631075	Registration date	06/02/2009
Registrant	SUMMIT ENTERTAINMENT, LLC 2700 Colorado Avenue, 2nd Floor Santa Monica, CA 90404 UNITED STATES		

Goods/Services Subject to the filing

Class 014. First Use: 2008/08/31 First Use In Commerce: 2008/08/31 All goods and services in the class are requested, namely: Bracelets; Bracelets of precious metal

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

SUMMIT ENTERTAINMENT, LLC,

Petitioner,

vs.

INFINITE JEWELRY CO. L.L.C.,

Registrant.

Cancellation No. 92056644

Registration No. 3721102

ANSWER AND COUNTERCLAIM

INFINITE JEWELRY CO. L.L.C.,

Counterclaimant,

vs.

SUMMIT ENTERTAINMENT, LLC,

Counterclaim Defendants.

COMES NOW Registrant, Infinite Jewelry Co. L.L.C. (“Infinite”), by and through counsel and hereby responds to Petitioner, Summit Entertainment, LLC’s (“Summit”) Petition for Cancellation by way of this Answer and Counterclaim.

ANSWER

Infinite hereby responds to each of the numbered allegations set forth in Summit’s Petition for Cancellation as follows:

General Denial: Any allegations set forth in the Petition for Cancellation which are not specifically addressed herein, should be considered denied pursuant to this general denial.

1. Infinite is without sufficient information to verify the allegations set forth in Paragraph 1 of the Petition for Cancellation and therefore denies the same.

2. Infinite admits the allegations set forth in Paragraph 2 of the Petition for Cancellation with the clarification that the novels written by Stephenie Meyer are commonly known as “The Twilight Series” and the movies are commonly known as, and differentiated as, “The Twilight Saga”.
3. Infinite denies the allegation that Summit has the right to use intellectual property relating to and derived from the *Twilight* Novels or The Twilight Series to the extent any rights claimed by Summit infringe upon the prior rights owned and possessed by Infinite. With respect to the remaining allegations set forth in Paragraph 3 of the Petition for Cancellation, Infinite is without sufficient information or knowledge to verify the same, and therefore denies the same.
4. Infinite admits the allegations set forth in Paragraph 4 of the Petition for Cancellation, with the clarification that Infinite contests the validity of said registration to the extent it violates and infringes the registration owned by Infinite which was filed prior to the registration referenced in Paragraph 4.
5. Infinite admits the allegations set forth in Paragraph 5 of the Petition for Cancellation, with the clarification that Infinite contests the validity of said registration to the extent it violates and infringes the registration owned by Infinite which was filed prior to the registration referenced in Paragraph 5.
6. Infinite admits the allegations set forth in Paragraph 6 of the Petition for Cancellation, with the clarification that Infinite contests the validity of said registrations to the extent they violate and infringe the registration owned by Infinite which was filed prior to the registrations referenced in Paragraph 6.
7. Infinite admits the allegations set forth in Paragraph 7 of the Petition for Cancellation.

8. Paragraph 8 of the Petition for Cancellation is not an allegation of fact, but a legal conclusion. As such it requires no response from Infinite. If a response is required, Infinite relies upon the general denial set forth at the beginning of this document.
9. Infinite admits the allegations set forth in the first two sentences of Paragraph 9 of the Petition for Cancellation. Infinite denies the allegations set forth in the third sentence of Paragraph 9 of the Petition for Cancellation. Infinite has never associated BELLA'S ENGAGEMENT RING with The Twilight Saga movies. Infinite's BELLA'S ENGAGEMENT RING is only directly associated with The Twilight Series of books, not the movies, and there are significant differences between the two. Infinite uses the terms Twilight and Bella's Bracelet under authorization granted and used prior to the trademarks claimed by Petitioner. Infinite admits the Registration No. 3,721,102 was registered on December 8, 2009.
10. Infinite denies the allegations set forth in Paragraph 10 of the Petition for Cancellation.
11. Infinite denies the allegations set forth in Paragraph 11 of the Petition for Cancellation inasmuch as they set forth incomplete information, contain legal conclusions, and generally present information that is inaccurate and will confuse the actual facts of this matter.
12. Infinite denies the allegations set forth in Paragraph 12 of the Petition for Cancellation.
13. Infinite denies the allegations set forth in Paragraph 13 of the Petition for Cancellation.
14. Infinite is without sufficient information to verify the allegations set forth in Paragraph 14 of the Petition for Cancellation, and therefore denies the same.

15. Paragraph 15 of the Petition for Cancellation calls for a legal conclusion and requires no response. To the extent a response is required, Infinite relies upon the general denial set forth at the beginning of this document.
16. Infinite admits the allegations set forth in Paragraph 16 of the Petition for Cancellation. This is the basis of the Counterclaim filed concurrently herewith, inasmuch as Infinite's registration is prior, and superior, to the registrations claimed by Summit.
17. Infinite denies the allegation that Summit is suffering damage as a result of Infinite's registration. Infinite's registration is prior, and superior, to Summit's registrations, and Infinite is actually the party suffering and experiencing the harms as a result of Summit's infringement as set forth in the Counterclaim filed concurrently herewith.
18. Infinite denies the allegations set forth in Paragraph 18 of the Petition for Cancellation.

FIRST AFFIRMATIVE DEFENSE

Summit's Petition for Cancellation fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Summit's claims are barred, in whole or in part, by the doctrines of release and waiver.

THIRD AFFIRMATIVE DEFENSE

Summit's claims are barred, in whole or in part, by the doctrines of laches and estoppels.

FOURTH AFFIRMATIVE DEFENSE

Summit's claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Summit's claims are barred, in whole or in part, by the doctrine of acquiescence.

SIXTH AFFIRMATIVE DEFENSE

Summit's claims are barred, in whole or in part, due to Infinite's prior registration and superior claim.

Facts may come to light supporting additional affirmative defenses, and Infinite hereby reserves the right to raise such other affirmative defenses as facts supporting such are discovered.

WHEREFORE, Infinite prays that the Petition for Cancellation be denied in its entirety, and that Infinite's registration continue in full force and effect.

COUNTERCLAIM

COUNTERCLAIMANT, Infinite Jewelry Co. L.L.C., ("Infinite"), a Utah limited liability company, with a place of business located at 2321 East Rustic Drive, St. George, Utah 84790, believes that it has been, and will continue to be, damaged by U.S. Reg. Nos. 3,631,075 and 4,222,783, and hereby petitions to cancel these registrations on the following grounds:

1. Infinite is a jewelry company located in St. George, Utah, and produces jewelry based upon The Twilight Series of novels written by the world renowned author, Stephenie Meyer.
2. More specifically, Infinite produces an engagement ring and bracelet described in the book *Eclipse*, Book Three of the Twilight Series. In *Eclipse*, Ms. Meyer describes the ring and bracelet in intricate detail.

3. Ms. Meyer granted the right to Infinite to produce and distribute the engagement ring and bracelet described in *Eclipse*. Ms. Meyer worked closely with representatives of Infinite in designing and developing the jewelry items.
4. Ms. Meyer hand-signed 1,439 Certificates of Authenticity for jewelry produced by Infinite related to the book *Eclipse*, advertised the products produced by Infinite on her official website, provided a direct link to Infinite's website, and promoted Infinite as one of the "companies who have the legal right to sell Twilight stuff."
5. On December 9, 2008, Infinite filed an application, Serial No. 77/629,208, with the United States Patent & Trademark Office to register BELLA'S ENGAGEMENT RING in connection with the production of "Jewelry". The first date of use associated with the trademark was November 27, 2007. The use of BELLA'S ENGAGEMENT RING is limited to production of the engagement ring as described in the book *Eclipse*, and as developed in conjunction with Ms. Meyer.
6. Infinite was authorized by Ms. Meyer to register and use BELLA'S ENGAGEMENT RING for goods and services, including jewelry.
7. Infinite's trademark BELLA'S ENGAGEMENT RING is famous within the meaning of the Federal Dilution Act.
8. Summit claims the exclusive right to produce and distribute the Twilight motion pictures, and all intellectual property relating to and derived from the Twilight motion pictures.
9. Upon information and belief, any claim by Summit to such intellectual property rights is based on an alleged grant of said rights after Ms. Meyer had granted the right to Infinite to create, produce, market, and sell the engagement ring and bracelet from the The Twilight Series of novels.

10. As such, Infinite's claim and trademark rights are superior to any alleged rights claimed by Summit.
11. Summit has sought to claim such rights through the filing of two federal trademark registrations. The first is U.S. Reg. No. 3,631, 075 for the mark BELLA'S CHARM BRACELET, registered on June 2, 2009 for "bracelets; bracelets of precious metal" in International Class 14. The registration cites a first date of use as August 31, 2008.
12. The second federal trademark registration is U.S. Reg. No. 4,222,783 for the mark BELLA TWILIGHT, registered on October 9, 2012 for "jewelry and jewelry boxes" in International Class 14. The registration cites a date of first use of June 3, 2012.
13. Summit also claims ownership in a number of additional federal registrations and pending applications for BELLA TWILIGHT in various International Classes.
14. All of Summit's claims to such intellectual property are junior to Infinite's rights.
15. Infinite's use of its mark BELLA'S ENGAGEMENT RING, and the quality of the items produced by Infinite, has established valuable goodwill and a reputation in connection with its mark BELLA'S ENGAGEMENT RING.
16. Summit's use of BELLA TWILIGHT, BELLA, and BELLA'S CHARM BRACELET is similar in appearance, sound, connotation, and commercial impression to Infinite's mark BELLA'S ENGAGEMENT RING.
17. Infinite and Summit's respective goods as offered under their respective marks are identical in that they both involve jewelry, are distributed and sold through the same or similar channels of trade, and are marketed to the same or similar customers and end users.

18. Infinite has been damaged, and will continue to be damaged, by the continued registration of Summit's marks of BELLA TWILIGHT, BELLA, and BELLA'S CHARM BRACELET in connection with the production of jewelry inasmuch as such conduct is likely to: 1) cause confusion and mistake among customers, potential customers, and others thereby injuring Infinite and the consuming public, and jeopardizing the valuable goodwill and reputation established by Infinite in connection with its mark BELLA'S ENGAGEMENT RING; 2) creates a false association with The Twilight Series of novels; and 3) is likely to dilute Infinite's BELLA'S ENGAGEMENT RING trademark.
19. For the reasons stated herein, Infinite will be damaged by the continued registration of BELLA TWILIGHT, BELLA, and BELLA'S CHARM BRACELET trademarks.

WHEREFORE, Infinite prays that Summit's trademarks for BELLA TWILIGHT, BELLA and BELLA'S CHARM BRACELET be immediately cancelled.

The filing fee for a Counterclaim of this nature is submitted herewith.

Respectfully submitted this 20th day of February, 2013.

/ R. Brett Evanson/
R. Brett Evanson
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2013 this document was transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a), and a copy was delivered via US First Class Mail, postage prepaid, to the following:

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/R. Brett Evanson/
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