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

Proceeding	92057365
Party	Defendant Tracie Martyn International LLC
Correspondence Address	TRACIE MARTYN INTERNATIONAL LLC 101 FIFTH AVENUE NEW YORK, NY 10003 UNITED STATES
Submission	Answer
Filer's Name	Kathryn Jennison Shultz
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Signature	/Kathryn Jennison Shultz/
Date	07/16/2013
Attachments	answer to petition to cancel 92057365.pdf(1156528 bytes )

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

CAPRICO USA LLC,	:	
	:	
Petitioner,	:	Cancellation No. 92/057,365
	:	Reg. No. 3,870,044
v.	:	Trademark: RADIANT GLOW
	:	
TRACIE MARTYN INTERNATIONAL LLC,	:	
	:	
Registrant.	:	

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ANSWER TO PETITION TO CANCEL

Registrant Tracie Martyn International LLC, by its undersigned counsel, answers the Petition to Cancel, filed June 18, 2013, by Petitioner Caprico USA LLC, as follows:

In the opening paragraph, Petitioner states that it "hereby petitions to cancel U.S. Registration No. 3,870,044 for 'RADICAL GLOW' owned by Tracie Martyn International, LLC." (emphasis added). Registrant admits that it is the owner of Registration No. 3,870,044; however, the mark for Registration No. 3,870,044 is RADIANT GLOW not RADICAL GLOW as incorrectly stated by petitioner.

Registrant in its answer will assume the Petitioner meant to use the correct trademark and will substitute the correct mark RADIANT GLOW into the numbered paragraphs of grounds alleged by the Petitioner.

1. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Petition for Cancellation, and therefore denies the same, and leaves Petitioner to its proof.
2. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 2 of the Petition

for Cancellation, and therefore denies the same, and leaves Petitioner to its proof.

3. Registrant denies that the mark for Registration No. 3,870,044 is RADICAL GLOW. Registrant admits that the mark for Registration No. 3,870,044 is RADIANT GLOW. Registrant admits that the underlying application (Serial No. 77/968,612) was filed on March 25, 2010 and Registration No. 3,870,044 was issued on November 2, 2010.
4. The challenged registration covers the mark RADIANT GLOW not the mark RADICAL GLOW as incorrectly stated by the Petitioner. Registrant admits that it claims March 19, 2010 as the first date that its commenced use of its RADIANT GLOW mark in commerce in connection with nutritional supplements.
5. The challenged registration covers the mark RADIANT GLOW not the mark RADICAL GLOW as incorrectly stated by the Petitioner. Registrant admits that it is currently offering to sell and is currently selling nutritional supplements using its RADIANT GLOW registered mark.
6. The challenged registration covers the mark RADIANT GLOW not the mark RADICAL GLOW as incorrectly stated by the Petitioner. Registrant admits that it has continued to use its RADIANT GLOW trademark in the ordinary course of trade since March 19, 2010.
7. The challenged registration covers the mark RADIANT GLOW not the mark RADICAL GLOW as incorrectly identified by the Petitioner. Registrant denies that it has abandoned its RADIANT GLOW trademark.

AFFIRMATIVE DEFENSES

In further answer to the Petition for Cancellation, Registrant asserts that:

1. The Petition for Cancellation fails to state a claim upon which relief can be granted. Petitioner incorrectly identifies the mark for Registration No. 3,870,044 and alleges abandonment of a mark that is not the subject of the registration and subsequently of this proceeding.
2. Registrant has continuously used its RADIANT GLOW trademark on and in connection with its nutritional supplements since the March 19, 2010 first date of use claimed in Registration No. 3,870,044.
3. Registrant has not abandoned use of its RADIANT GLOW trademark on or in connection with its nutritional supplements.
4. Registrant has continuously had a bona fide intention to use its RADIANT GLOW trademark on or in connection with its nutritional supplements.

WHEREFORE, having fully answered the Petition for Cancellation, Registrant Tracie Martyn International LLC respectfully requests that the Petition for Cancellation be in all respects dismissed with prejudice.

Respectfully submitted,

TRACIE MARTYN INTERNATIONAL LLC

Date: July 16, 2013

By: 

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CERTIFICATE OF SERVICE

I hereby certify that true and complete copy of ANSWER TO PETITION TO CANCEL was served upon Petitioner Caprico USA LLC, by forwarding same via First Class Mail, postage prepaid, to Petitioner's counsel of record, John Cyril Malloy, III, Malloy & Malloy, P.L., 2800 SW Third Avenue, Miami, Florida 33129, this 16<sup>th</sup> day of July, 2013.

A handwritten signature in cursive script, reading "Kathryn Jennison Shultz", written over a horizontal line.

Kathryn Jennison Shultz