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

Proceeding	92058137
Party	Defendant EXP613, LLC
Correspondence Address	EXP613, LLC 1835 NE MIAMI GARDENS DRIVE, SUITE 250 MIAMI, FL 33179 UNITED STATES
Submission	Answer
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Date	12/13/2013
Attachments	ANSWER.pdf(131793 bytes )

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

In the matter of Trademark Registration No. 3,604,236  
By EXP613, LLC for the mark EXP

Express, LLC,	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92058137
	§	
EXP613, LLC,	§	
	§	
Respondent.	§	

**ANSWER TO PETITION FOR CANCELLATION**

Respondent, EXP613, LLC (“Respondent”), hereby answers the Petition for Cancellation of Express, LLC (“Petitioner”). Respondent reserves the right to amend or supplement this Answer to the Petition for Cancellation as appropriate.

1. With respect to paragraph 1, Respondent admits that it is a single member Florida limited liability company with Mr. Andrew Altschuler as its sole member and residing in Israel.
2. With respect to paragraph 2, Respondent admits to the allegation.
3. With respect to paragraph 3, Respondent admits to the allegation.
4. With respect to paragraph 4, Respondent admits to the allegation.
5. With respect to paragraph 5, Respondent denies the allegations.
6. With respect to paragraph 6, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations.
7. With respect to paragraph 7, Respondent denies the allegations that Petitioner’s EXPRESS marks have priority over Respondent’s EXP mark. Respondent does not have

sufficient information to admit or deny the other allegations in paragraph 7 and Respondent therefore denies the allegations.

8. With respect to paragraph 8, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations. Further, Petitioner's allegations appears to be misleading since Petitioner's Registration No. 1,539,267 for EXP & Design for costume jewelry, watches and clocks in International Class 14 were withdrawn and canceled in 1995 and the entire registration was canceled in 2009 relating to clothing for Petitioner's failure to file a Section 8 Affidavit attesting to a continued use. Moreover, inconsistent with its allegation of continuous use, Petitioner filed a new Application Serial No. 77/733,938, directed a similar EXP & Design as its canceled Registration No. 1,539,267, in only International Class 25 based upon an allegation of Petitioner's *bona fide* intent to use the mark in commerce.

9. With respect to paragraph 9, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations.

10. With respect to paragraph 10, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations.

11. With respect to paragraph 11, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations.

12. With respect to paragraph 12, Respondent admits to Petitioner's allegation that the public, including the New York Stock Exchange, believes that EXPRESS abbreviates to EXPR and not EXP. The ticker symbol EXP on the New York Stock Exchange is associated with Eagle Materials Inc. and not Petitioner. Also, the ticker symbol EXPR on the New York Stock Exchange is associated with Express Inc. and not Petitioner.

13. With respect to paragraph 13, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations. Further, Petitioner's allegations appears to be misleading since Petitioner's Registration No. 1,539,267 for EXP & Design for costume jewelry, watches and clocks in International Class 14 were withdrawn and canceled in 1995 and the entire registration was canceled in 2009 relating to clothing for Petitioner's failure to file a Section 8 Affidavit attesting to a continued use. Moreover, inconsistent with its allegation of continuous use, Petitioner filed a new Application Serial No. 77/733,938, directed a similar EXP & Design as its canceled Registration No. 1,539,267, in only International Class 25 based upon an allegation of Petitioner's *bona fide* intent to use the mark in commerce.

14. With respect to paragraph 14, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations. Further, Petitioner's allegations appears to be misleading since Petitioner's Registration No. 1,539,267 for EXP & Design for costume jewelry, watches and clocks in International Class 14 were withdrawn and canceled in 1995 and the entire registration was canceled in 2009 relating to clothing for Petitioner's failure to file a Section 8 Affidavit attesting to a continued use. Moreover, inconsistent with its allegation of continuous use, Petitioner filed a new Application Serial No. 77/733,938, directed a similar EXP & Design as its canceled Registration No. 1,539,267, in only International Class 25 based upon an allegation of Petitioner's *bona fide* intent to use the mark in commerce.

15. With respect to paragraph 15, Respondent denies the allegations that Petitioner's EXPRESS mark has become distinctive or famous. Respondent does not have sufficient

information to admit or deny the other allegations in paragraph 15 and Respondent therefore denies the allegations.

16. With respect to paragraph 16, Respondent denies the allegations that Petitioner's EXPRESS mark has become distinctive or famous. Further, Petitioner's allegations appears to be misleading since Petitioner's Registration No. 1,539,267 for EXP & Design for costume jewelry, watches and clocks in International Class 14 were withdrawn and canceled in 1995 and the entire registration was canceled in 2009 relating to clothing for Petitioner's failure to file a Section 8 Affidavit attesting to a continued use. Moreover, inconsistent with its allegation of continuous use, Petitioner filed a new Application Serial No. 77/733,938, directed a similar EXP & Design as its canceled Registration No. 1,539,267, in only International Class 25 based upon an allegation of Petitioner's *bona fide* intent to use the mark in commerce.

17. With respect to paragraph 17, Respondent denies the allegations.

18. With respect to paragraph 18, Respondent denies the allegations. Moreover, Respondent denies the allegations that Petitioner's EXPRESS mark is either distinctive or famous.

19. With respect to paragraph 19, Respondent admits that its adoption and use were without license, permission or authorization of Petitioner, but denies the allegation to the extent that it implies or otherwise connotes that any license, permission or authorization was required.

20. With respect to paragraph 20, Respondent denies the allegation.

21. With respect to paragraph 21, Respondent does not have information sufficient to admit or deny the allegations and Respondent therefore denies the allegations.

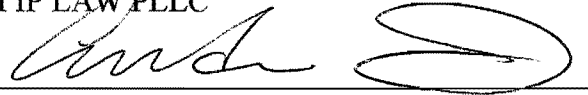
**AFFIRMATIVE DEFENSE**

- A. No likelihood of confusion exists between Applicant's EXP mark and Petitioner's EXPRESS mark when considered in their entireties.
- B. Respondent has priority of actual use in the mark EXP for jewelry.
- C. Respondent has prior registration for the mark EXP for similar goods.
- D. Cancellation is barred by the doctrines of unclean hands, laches, estoppel and acquiescence.

WHEREFORE, Respondent respectfully requests that this Cancellation be dismissed, that judgment be entered in Respondent's favor.

Dated: December 13, 2013

Respectfully submitted,  
IM IP LAW PLLC



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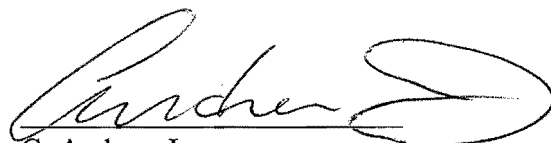
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*Attorneys for Respondent EXP613, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was sent by United States First Class Mail, Postage Prepaid, on December 13, 2013 to:

Frank J. Colucci, Esq.  
Colucci & Umans  
218 East 50th Street  
New York, NY 10022

A handwritten signature in black ink, appearing to read "C. Andrew Im", written over a horizontal line.

C. Andrew Im