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

Proceeding	92058280
Party	Defendant Tenggis Co., Ltd.
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Date	01/02/2014
Attachments	Answer to Petition to Cancel No.92058280.pdf(165092 bytes ) Certificate of Service.pdf(120263 bytes )

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

In the matter of:  
Registration No. 3949134  
Registration Date: April 19, 2011  
Trademark: CHINGGIS KHAAN KHAAN OF BEERS  
Class: 032

APU XK,

Petitioner,

v.

TENGGIS CO., LTD.

Registrant.

Cancellation No. 92058280

**REGISTRANT'S ANSWER TO PETITION TO CANCEL**

Registrant Tenggis Co., Ltd. hereby responds to the petition to cancel as follows:

Registrant denies the allegations of unnumbered paragraph of the petition to cancel. Petitioner's address stated in the unnumbered paragraph of the petition to cancel is different than the one stated on the U.S Trademark Mark Application Serial No. 85801808, therefore it does not establish a proof that Petitioner is the same business entity that owns the Application No. 85801808.

1. Registrant is without knowledge or information sufficient to form a belief as to paragraph 1 of the petition to cancel and therefore denies the same.

2. Registrant is without knowledge or information sufficient to form a belief as to paragraph 2 of the petition to cancel and therefore denies the same.

3. Registrant denies the allegations of paragraph 3 of the petition to cancel.

The Registration is resulted from an intent-to-use application filed with the USPTO on

February 8, 2004 but not on July 11, 2004 as it claims in paragraph 3 of the petition to cancel. This allegation is a not a valid claim and it proves that the Petitioner's allegations are based on only assumptions but not on solid research and evidences.

4. Registrant denies the allegations of paragraph 4 of the petition to cancel.

5. Registrant admits the allegations of paragraph 5 of the petition to cancel.

6. Registrant admits the allegations of paragraph 6 of the petition to cancel.

7. Registrant denies the allegations of paragraph 7 of the petition to cancel.

Petitioner's failure of finding information does not prove that Registrant has never used the Registrant's Mark in commerce. Petitioner has no evidence at all and will not be able to prove that Registrant had not truthfully and with reasonable and legitimate bases made the representations in his application and subsequent Statement of Use filed with the USPTO.

8. Registrant denies the allegations of paragraph 8 of the petition to cancel.

Fraud is the only basis Petitioner alleges in its petition to cancel, which is based on unfounded accusations. The Statement of Use filed with USPTO by the Registrant clearly states that the Registrant first used the Registrant's Mark on July 11, 2004 but not July 15, 2004 as it states in the paragraph 8 of the petition to cancel. This allegation is not a valid claim and it denies and contradicts its own statements made in paragraph 5 of the petition to cancel.

9. Registrant denies the allegations of paragraph 9 of the petition to cancel.

Registrant has thousands of witnesses, including high government officials such as former President of Mongolia, and former Mongolian Ambassador to the United States and dozens of American businesses, several Beer Festivals, newspapers and media that

can prove the sales of the Registrant's Goods in commerce under the Registrant's Mark.

10. Registrant denies the allegations of paragraph 10 of the petition to cancel.

11. Registrant denies the allegations of paragraph 11 of the petition to cancel.

12. Registrant denies the allegations of paragraph 12 of the petition to cancel.

13. Registrant is without knowledge or information sufficient to form a belief as to paragraph 13 of the petition to cancel and therefore denies the same.

14. Registrant is without knowledge or information sufficient to form a belief as to paragraph 14 of the petition to cancel and therefore denies the same.

15. Registrant denies the allegations of paragraph 15 of the petition to cancel. Petitioner's failure to obtain the right information does not prove that Registrant and the Alcohol and Tobacco Tax and Trade Bureau have no records of label approval.

16. Registrant denies the allegations of paragraph 16 of the petition to cancel. Fraud is the only basis Petitioner alleges in its petition to cancel, which is based on unfounded accusations and incorrect assumptions. The Petitioner is making these allegations with the intent to deceive the Trademark Trial and Appeal Board regarding the legitimacy of the Registrant's Mark.

17. Registrant denies the allegations of paragraph 17 of the petition to cancel based on the statements made in paragraph 19 and 20 of the Registrant's answer to petition to cancel.

18. Registrant denies the allegations of paragraph 18 of the petition to cancel. Registrant has thousands of witnesses, including high government officials such as former President of Mongolia, and former Mongolian Ambassador to the United States and dozens of American businesses, several Beer Festivals, newspapers and media that

can prove the use of the Registrant's Mark in commerce in connection with Registrant's Goods.

19. Registrant denies the allegations of paragraph 19 of the petition to cancel. Petitioner's allegations confirm and prove that the Petitioner is not convinced of its own allegations made in paragraphs 1-18 of the petition to cancel. With the statement of "if Registrant had ever used Registrant's Mark" in the paragraph 19 of the petition to cancel, the Petitioner denies and contradicts its own allegations made in paragraphs 1-18 of the petition to cancel.

It also clearly shows that the Petitioner's allegations are based on only assumptions that are not based on evidences or Petitioner has prior knowledge of the Registrant's Goods in commerce and validity of the Registration.

Petitioner is making false and misleading claims and allegations with the intent to deceive the Trademark Trial and Appeal Board.

20. Registrant denies the allegations of paragraph 20 of the petition to cancel. The Registration was issued on April 19, 2011. But there have not been three years yet since the Registration Date.

This allegation is not a valid claim and it denies and contradicts Petitioner's own allegations in the paragraph 6 of the petition to cancel.

With the statement of "Registrant has ceased using Registrant's Mark in connection with Registrant's Goods" in the paragraph 20 of the petition to cancel, the Petitioner denies and contradicts its own allegations made in paragraphs 1-19 of the petition to cancel.

It also clearly shows that the Petitioner's allegations are based on only

assumptions that are not based on evidences or Petitioner has prior knowledge of the Registrant's Goods in commerce and validity of the Registration.

Petitioner is making this allegation based on miscalculation and creating misleading claim and allegation with the intent to deceive the Trademark Trial and Appeal Board.

21. Registrant denies the allegations of paragraph 21 of the petition to cancel. The Registrant is preparing to mass-produce the Registrant's Goods and it will be in commerce before April 19, 2014.

22. Registrant denies the allegations of paragraph 22 of the petition to cancel. Petitioner has not and will not be damaged by the Registration. Petitioner assumed the risk of damage to itself and has no right to any claim of damage.

Petitioner's U.S Trademark Mark Application Serial No. 85801808 is only intent-to-use application and currently there is no Petitioner's Goods in commerce and there is no guarantee that the Petitioner will have Petitioner's Goods in commerce in the United States.

### **AFFIRMATIVE DEFENSES**

The petition to cancel, although crafted to appear valid, is based on allegations that are speculations but not on evidences and references to rights that do not exist, therefore lacks standing to petition to cancel the registration.

1. Petitioner is a foreign business entity based in Mongolia, which has no business history in the United States and has no existing business registration, nor licenses to conduct any commerce in the United States of America.

2. Petitioner has not and will not be damaged by the Registration

No. 3949134. Petitioner's U.S Trademark Mark Application Serial No. 85801808 is only intent-to-use application and currently there is no Petitioner's Goods in commerce and there is no guarantee that the Petitioner will have Petitioner's Goods in commerce in the United States.

Petitioner has history of failure to use Petitioner's Goods in commerce in the United States. Petitioner applied for CHINGGIS KHAN trademark on May 2, 2003 (U.S. Trademark Application Serial No. 78245307) and had opportunities to use the applied mark on Petitioner's Goods in commerce for period of three years between 2007 and 2010. But Petitioner failed to use the Petitioner's Goods in commerce and abandoned the Application. Even today Petitioner has no goods (in Class 33) in commerce in the United States of America.

3. Petitioner assumed the risk of damage to itself. Petitioner has no right to any claim of damage. Petitioner has no existing business history, interests and never had any goods in commerce in the United States.

4. Petitioner's address is different than the one stated on the U.S Trademark Mark Application Serial No. 85801808, therefore there is no proof that Petitioner is the same business entity that owns the Application No. 85801808.

5. Petitioner failed to identify the damages would be caused by the Registration.

6. Petitioner failed to identify its interest in the trademark.

7. Petitioner is failed to demonstrate its allegations are based on solid evidences, but not assumptions, misleading claims and statements.

8. With the statements in paragraph 19 and 20 of the petition to cancel,

Petitioner denies its own allegations made in paragraph 1-18 of the petition to cancel.

9. Petitioner is knowingly making false statements and allegations to induce the Trademark Trial and Appeal Board to cancel the Registration. The Petitioner has offered money to Registrant to buy the Registration on November 15, 2012 and has knowledge of the validity of the Registration, the Registrant's Goods and use of the mark in commerce that is subject of the petition to cancel.

10. The claim set forth in the petition to cancel is barred in whole or in part by the doctrine of laches, estoppel, waiver and unclean hands.

The petition to cancel is grounded on false statements, incorrect assumptions and accusations, inaccurate and misleading allegations, miscalculations and mistakes, and references to rights that do not exist to deceive the Trademark Trial and Appeal Board and should prevent this groundless claim from being heard.

Wherefore, Registrant prays and requests that the petition to cancel be dismissed with prejudice.

Respectfully Submitted,



Enkhbayar Shagdarguntev  
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Date: January 2, 2014



**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via ESTTA (Electronic System for Trademark Trials and Appeals) on the date identified below.



Date: January 2, 2014

Enkhbayar Shagdarguntev  
Tenggis Co., Ltd.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S ANSWER TO PETITION TO CANCEL has been served Counsel (Attorney) for Petitioner on this 2<sup>nd</sup> day of January 2014 via Priority Mail to:

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Date: January 2, 2014

Enkhbayar Shagdarguntev  
Tenggis Co., Ltd.