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

Proceeding	92058553
Party	Defendant Saul Salamanca
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 3874861
For the Trademark: VITAGRIP

Laboratorios Lopez, S.A. de C.V.)
)
 Petitioner,)
)
 v.)
)
Saul Salamanca dba Promesa Distributors Inc.,)
)
 Registrant.)

Cancellation No. 92058553

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**SAUL SALAMANCA DBA PROMESA DISTRIBUTOR INC.’S ANSWER TO
LABORATORIOS LOPEZ, S.A. DE C.V.’S PETITION FOR CANCELLATION**

Registrant Saul Salamanca dba Promesa Distributors Inc. (“Promesa” or “Registrant”), by its undersigned counsel, K&L Gates LLP, hereby files its Answer to the Petition for Cancellation filed by Laboratorios Lopez, S.A. de C.V. (“Petitioner”), as follows:

ANSWER: With respect to Petitioner’s unnumbered paragraph, Registrant denies that Petitioner will be damaged by the continued registration of the mark VITAGRIP, which is registered to Promesa. Registrant admits that VITAGRIP, which is set forth in Reg. No. 3874861, was issued to Promesa. Registrant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

1. On January 18, 2010, the United States Patent and Trademark Office issued Reg. No. 3874861 for the mark VITAGRIP for "cough treatment preparations."

ANSWER: Registrant admits that the United States Patent and Trademark Office issued Reg. No. 3874861 for the mark VITAGRIP for "cough treatment preparations." However, Registrant denies that the registration was issued January 18, 2010 because the registration date was November 9, 2010.

2. On May 13, 2011, Petitioner submitted application Ser. No. 85320156 to the United States Patent and Trademark Office seeking to register the mark VITA-GRIP for "pharmaceuticals and chemical products including anti-flu preparations, decongestants, and antihistamines."

ANSWER: Registrant admits the allegations contained in Paragraph 2.

3. During the examination of application Ser. No. 85320156, the US PTO refused registration under Section 2(d) of the Trademark Act based on a likelihood of confusion with the mark set forth in Reg. No. 3874861.

ANSWER: Registrant admits the allegations contained in Paragraph 3.

4. On January 17, 2014, Petitioner submitted a new application, Ser. No. 86168317, again seeking to register the mark VITA-GRIP for "pharmaceuticals and chemical products including anti-flu preparations, decongestants, and antihistamines."

ANSWER: Registrant admits that Petitioner submitted a new application on January 17, 2014 with Serial No. 86168317. However, Registrant denies that the goods are described as "pharmaceuticals and chemical products including anti-flu preparations, decongestants, and antihistamines."

5. On information and belief, Registrant has discontinued use of the mark set forth in Reg. No. 3874861.

ANSWER: Registrant denies the allegations contained in Paragraph 5.

6. On information and belief, Registrant does not intend to resume use of the mark set forth in Reg. No. 3874861.

ANSWER: Registrant denies the allegations contained in Paragraph 6 because Registrant has not discontinued use of the mark set forth in Reg. No. 3874861 and Registrant intends to continue use of the mark.

7. On information and belief, Registrant has abandoned the mark set forth in Reg. No. 3874861.

ANSWER: Registrant denies the allegations contained in Paragraph 7.

8. Any goodwill that may have been associated with the mark set forth in 3874861 has been destroyed by Registrant's intentional abandonment and nonuse of the mark in commerce.

ANSWER: Registrant denies the allegations contained in Paragraph 8.

9. On information and belief, Registrant was never the owner of the mark set forth in Reg. No. 3874861 as required by Section 1 of the Trademark Act, 15 U.S.C. § 1051 and was instead merely a distributor of anti-itch creams and anti-itch ointments. The specimen of use submitted by Registrant to the US PTO during the examination of the application that resulted in the issuance of Reg. No. 3874861 clearly identifies Registrant as the distributor.

ANSWER: Registrant denies the allegations contained in Paragraph 9.

10. Petitioner is or will be damaged by the existence of this registration. Specifically, an Examining Attorney will be of the opinion that the mark set forth in application Ser. No. 86168317 consists of or comprises a mark which so resembles the mark set forth in Reg. No. 3874861 as to be likely to cause confusion, or to cause mistake, or to deceive, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), and will, therefore, refuse registration of application Ser.

No. 86168317.

ANSWER: Registrant denies that Petitioner is or will be damaged by the existence of Reg.

No. 3874861. Registrant is without sufficient knowledge or information to form a belief as to the remaining allegations contained in Paragraph 10.

AFFIRMATIVE DEFENSES

1. The Petition fails to state a claim upon which relief can be granted.
2. Registrant hereby gives notice that it may rely on any additional affirmative defenses that become apparent or available during discovery, and Registrant therefore reserves the right to amend to assert such affirmative defenses.

WHEREFORE, Registrant respectfully requests that the Cancellation be dismissed with prejudice.

Saul Salamanca dba Promesa Distributors Inc.,
Registrant

Date: February 26, 2014

By: /Alexis Crawford Douglas/
One of its Attorneys

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CERTIFICATE OF FILING, MAILING AND SERVICE

I hereby certify that on February 26, 2014, the foregoing ANSWER is being electronically transmitted through the ESTTA system to:

Trademark Trial and Appeal Board
Alexandria, VA 22313

I further certify that on February 26, 2014, the foregoing is being served by mailing a copy thereof by first-class mail addressed to:

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