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

Proceeding	92058707
Party	Defendant Authentic Beverage Management, L.L.C.
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Submission	Answer
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Date	04/01/2014
Attachments	Respondents Original Answer.pdf(40685 bytes )

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

<b>FLIX Entertainment LLC,</b>  <b>Petitioner,</b>  v.  <b>Authentic Beverage Management, L.L.C.,</b>  <b>Registrant.</b>	<b>Cancellation No. 92058707</b>
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**RESPONDENT’S ORIGINAL ANSWER**

Respondent Authentic Beverage Management, L.L.C. (“ABM”) hereby answers the *Petition for Cancellation Under 37 CFR § 2.101(b)* (the “Petition”) of Petitioner FLIX Entertainment LLC (“Flix”), which concerns Registration No. 4,467,239, issued on January 14, 2014, for the mark LUPULUS in International Class 32 for “beer” (the “Registration”).

**I.  
ADMISSIONS AND DENIALS**

1. ABM admits the allegations contained in the first introductory paragraph of the Petition that Flix is a Texas company; that Registration No. 4,467,239 is for the mark LUPULUS; and that Flix has moved to cancel the Registration. ABM lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in the first introductory paragraph of the Petition.

2. ABM admits the allegations contained in the second introductory paragraph of the Petition.

3. ABM admits the allegations contained in numbered paragraph 1 of the Petition that Flix operates a combination movie theater, restaurant and brew house. ABM lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in numbered paragraph 1 of the Petition.

4. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 2 of the Petition.

5. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 3 of the Petition.

6. ABM admits the allegations contained in numbered paragraph 4 of the Petition that Flix is the named applicant for Serial No. 86/125,676, filed November 21, 2013, for the design plus words mark LUPULUS IPA in International Class 32 for “beer”. ABM lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in numbered paragraph 4 of the Petition.

7. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 5 of the Petition.

8. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 6 of the Petition.

9. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 7 of the Petition.

10. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 8 of the Petition. To the extent that numbered paragraph 8 of the Petition calls for a legal conclusion, no further response is required.

11. ABM denies the allegations contained in numbered paragraph 9 of the Petition. To the extent that numbered paragraph 9 of the Petition calls for a legal conclusion, no further response is required.

12. ABM denies the allegation contained in numbered paragraph 10 of the Petition that Flix’s purported LUPULUS IPA mark is “famous”. ABM lacks knowledge or information

sufficient to form a belief about the truth of the remaining allegations contained in paragraph 10 of the Petition. To the extent that numbered paragraph 10 of the Petition calls for a legal conclusion, no further response is required.

13. ABM lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in numbered paragraph 11 of the Petition. To the extent that numbered paragraph 11 of the Petition calls for a legal conclusion, no further response is required.

14. ABM admits that it is the exclusive importer of Lupulus-brand beer in the United States of America; that said Lupulus-brand beer is brewed or otherwise manufactured by a Belgium brewery; and that the specimens ABM submitted with the Statement of Use filed on October 17, 2013, and giving rise to the Registration are the labels affixed to the bottles or other packaging of said Lupulus-brand beer. ABM denies the remaining allegations contained in numbered paragraph 12 of the Petition. To the extent that numbered paragraph 12 of the Petition calls for a legal conclusion, no further response is required.

## **II. AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

15. To the extent that any of the foregoing responses constitute affirmative defenses, they are incorporated herein by reference for all purposes.

### **Second Affirmative Defense**

16. Flix has failed to allege grounds sufficient to sustain the Petition, or has otherwise failed to state a claim upon which relief can be granted. For example, Flix has failed to plead fraud with particularity. FED. R. CIV. P. 9(b); *King Auto., Inc. v. Speedy Muffler King, Inc.*, 667 F.2d 1008, 212 U.S.P.Q. 801, 803 (CCPA 1981) (fraud must be pleaded with particularity).

**Third Affirmative Defense**

17. The Petition is barred by the doctrine of unclean hands.

**Fourth Affirmative Defense**

18. The Petition is barred by the doctrine of waiver.

**Fifth Affirmative Defense**

19. Flix lacks standing to petition cancellation of the Registration.

**III.  
PRAYER**

20. For these reasons, ABM respectfully requests that:
- a. the Petition and these proceedings be dismissed with prejudice;
  - b. the Registration remain undisturbed on the Principal Register; and
  - c. ABM be granted such other and further relief in law and/or equity as may be just and proper.

Dated: April 1, 2014  
Austin, Texas

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /Emilio B. Nicolas/

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing *Respondent's Original Answer* was served via e-mail and first-class mail, postage prepaid upon the following on this 1<sup>st</sup> day of April, 2014:

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*/Emilio B. Nicolas/*  
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