

ESTTA Tracking number: **ESTTA776396**

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

Proceeding	92059420
Party	Defendant Harry's Truck Stop
Correspondence Address	GREGG A PARADISE LERNER DAVID LITTENBERG KRUMHOLZ & MENTLIK LLP 600 SOUTH AVE WEST WESTFIELD, NJ 07090-1497 UNITED STATES gparadise@ldlkm.com, litigation@ldlkm.com, gparadise@lernerdavid.com, litigation@lernerdavid.com
Submission	Answer
Filer's Name	David G. Moss
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Signature	/David G. Moss/
Date	10/12/2016
Attachments	Answer to Third Petition to Cancel.pdf(2295230 bytes)

SHISEIDO AMERICAS CORPORATION,)	
)	
)	
Petitioner,)	Serial No:77/117,143
)	
v.)	
)	
)	Cancellation No: 92059420
)	
HARRY'S TRUCK STOP, LLC)	
)	
)	
Respondent)	

Harry's Truck Stop, LLC ("Respondent"), without waiving any right due to any insufficiency in the statement of the grounds of the Third Amended Petition to Cancel, and saving to itself all defenses in law and equity, in answer to the Third Amended Petition to Cancel of Shiseido Americas Corporation ("Petitioner"), hereby responds in the paragraphs below, which are numbered to correspond with those set forth in the Third Amended Petition to Cancel. Respondent answers as follows:

- 1) Respondent admits that it filed U.S. Trademark Application Ser. No. 77/117,143 on February 27, 2007 and admits that its Reg. No. 4,128,939, for the mark ORGASM issued on April 17, 2012. Respondent Admits that the application which was based on intent to use, proceeded to registration with a claimed a first use date of January 15, 2012 and a date of first use in commerce of February 10, 2012.

- 2) Respondent denies Petitioner's use of the word ORGASM, prior to Respondent's first use, was as a trademark. Respondent admits that prior to Respondent's use, Petitioner used the term ORGASM as a color, style, or grade designation, but not as an indicator of source.
- 3) Respondent denies Petitioner's use of the word ORGASM, prior to Respondent's first use, was as a trademark. Respondent admits that prior to Respondent's use, Petitioner used the term ORGASM as a color, style, or grade designation, but not as an indicator of source.
- 4) Respondent Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 4 of the Third Amended Petition to Cancel and, accordingly, denies the same. Respondent denies that "Petitioner has exceedingly valuable good will established in the ORGASM mark."
- 5) No answer to this paragraph is required because of Petitioner's improper amendment, which exceeds the scope of leave to amend in the Board's order dated June 3, 2016. To the extent that an answer is required, Respondent denies that "there is no issue as to priority." Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 5 of the Third Amended Petition to Cancel and, accordingly denies the same.
- 6) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 7) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 8) Denied.
- 9) Denied.

- 10) Denied.
- 11) Respondent incorporates by reference the responses from the proceeding paragraphs.
- 12) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 13) Denied.
- 14) Respondent admits that it was aware that Petitioner was using the word ORGASM as a color, style or grade designation, and not as an indicator of source.
- 15) Denied.
- 16) Denied.
- 17) Denied.
- 18) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 19) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 20) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 21) Respondent incorporates by reference the responses from paragraphs 1-10 and paragraphs 12-20.
- 22) Respondent admits that it is a Virginia Corporation that was organized in 2006.

- 23) Respondent admits that it filed the ORGASM Application for the listed goods on February 27, 2007.
- 24) Denied.
- 25) Denied.
- 26) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Third Amended Petition to Cancel and, accordingly denies the same.
- 27) Respondent denies the first sentence of paragraph 27 of the Third Amended Petition to Cancel. Respondent admits that the entities mentioned in the second sentence of paragraph 27 of the Third Amended Petition to Cancel, list the same principal office and Michael Moss as the registered agent.
- 28) Respondent admits that the Orgasm Cosmetics website was registered on May 30, 2007 to Michael Moss.
- 29) Denied.
- 30) Denied.
- 31) Denied.
- 32) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Third Amended Petition to Cancel and, accordingly, denies the same.
- 33) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Third Amended Petition to Cancel and, accordingly, denies the same. Respondent denies that petitioner holds "exclusive rights" in the Orgasm Mark.

34) Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Third Amended Petition to Cancel and, accordingly, denies the same.

Affirmative Defenses

- 1) Petitioner fails to state a claim upon which relief can be granted.
- 2) Petitioner abandoned whatever rights it might have had in the ORGASM mark based on non-use.
- 3) Petitioner's claims are barred by laches, acquiescence, equitable estoppel and waiver.

For the foregoing reasons, the Respondent prays that this cancellation proceeding be dismissed with prejudice; and that it be accorded further relief as provided for by law and the rules of practice in trademark cases.

Respectfully submitted,

Harry's Truck Stop, LLC

By: 

Date: October 12, 2016

David G. Moss
Harry's Truck Stop, LLC
5331 Distributor Drive
Richmond, VA 23225

Vice President
Harry's Truck Stop

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER TO THIRD AMENDED PETITION TO CANCEL has been served on Petitioner via first-class mail this 12th day of October 2016 to:

Ralph H. Cathcart
Ladas & Parry LLP
1040 Avenue of the Americas
New York, NY 10018

A handwritten signature in black ink, appearing to read "David G. Moss", is written over a horizontal line.

David G. Moss