

ESTTA Tracking number: **ESTTA622177**

Filing date: **08/19/2014**

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

Proceeding	92059538
Party	Defendant Sterling Jewelers Inc.
Correspondence Address	STERLING JEWELERS INC 375 GHENT ROAD AKRON, OH 44333 UNITED STATES
Submission	Answer
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Date	08/19/2014
Attachments	Answer to Artistry Ltd. Petition to Cancel.pdf(50645 bytes)

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

In re Registrations Nos. 3644234 & 3644235

For the marks: ARTISTRY DIAMOND COLLECTION and ARTISTRY DIAMOND
COLLECTION A & design

ARTISTRY, LTD.,

Petitioner,

v.

STERLING JEWELERS INC.,

Registrant.

Cancellation No. 92/059538

ANSWER

Registrant Sterling Jewelers, Inc. (“Sterling”) answers the Petition to Cancel (“Petition”) Registration Nos. 3644234 & 3644235 (the “Registrations”) filed by Petitioner Artistry, Ltd. as follows:

Sterling avers that the unnumbered aversons in the preface require no response. As to the numbered averments in the Petition, Sterling avers as follows:

1. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 1 of the Petition and therefore denies them.

2. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 2 of the Petition and therefore denies them.

3. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 3 of the Petition and therefore denies them.

4. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4 of the Petition and therefore denies them.

5. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 5 of the Petition and therefore denies them.

6. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 6 of the Petition and therefore denies them.

7. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 7 of the Petition and therefore denies them.

8. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 8 of the Petition and therefore denies them.

9. In response to the allegations of Paragraph 9 of the Petition, Sterling admits that Petitioner sells its products to jewelry retailers, but has insufficient knowledge and information to form a belief as to the truth of the remaining allegations in such paragraph and therefore denies them.

10. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 10 of the Petition and therefore denies them.

11. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 11 of the Petition and therefore denies them.

12. Sterling denies the allegations of Paragraph 12 of the Petition.

13. Sterling denies the allegations of Paragraph 13 of the Petition.

14. In response to the allegations of Paragraph 14 of the Petition, Sterling admits that the words "DIAMOND COLLECTION" are disclaimed in the Registrations, but denies the remaining allegations in such paragraph.

15. Sterling denies the allegations of Paragraph 15 of the Petition.

16. Sterling denies the allegations of Paragraph 16 of the Petition.
17. Sterling denies the allegations of Paragraph 17 of the Petition.
18. Sterling has insufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 18 of the Petition and therefore denies them.
19. Sterling denies the allegations of Paragraph 19 of the Petition.
20. Sterling denies the allegations of Paragraph 20 of the Petition.
21. Sterling denies the allegations of Paragraph 21 of the Petition.
22. Sterling denies the allegations of Paragraph 22 of the Petition.
23. Sterling denies the allegations of Paragraph 23 of the Petition.

AFFIRMATIVE DEFENSES

First Affirmative Defense – No Likelihood of Confusion

24. There is no likelihood of confusion between Sterling’s use of the “Artistry” marks in certain of its products and Petitioner’s use of “Artistry” as a business name. Both companies’ uses of “Artistry” have co-existed for at least seven years with no known instances of confusion. Moreover, the parties sell their products to different and distinct classes of consumers and through different trade channels: Sterling sells certain of its jewelry products under the “Artistry” name directly to consumers through its retail stores. By contrast, Petitioner sells its jewelry products at wholesale on a private label basis to buyers for independent jewelry stores. Further, on information and belief, Petitioner has never used the term “Artistry” alone, but only uses it together with “Ltd.” and then not as a brand or trademark but only to denote its corporate status.

Second Affirmative Defense – Laches

25. The Petition is barred by the doctrine of laches.

Third Affirmative Defense – Acquiescence

26. The Petition is barred by Petitioner’s acquiescence.

Fourth Affirmative Defense – Waiver

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

Registrant is unaware of any fees or costs associated with this filing, but authorizes the United States Patent and Trademark Office to deduct any fees necessary in connection with this filing or proceeding from the deposit account of Vorys, Sater, Seymour and Pease LLP, Account No. 506424.

WHEREFORE, Registrant prays that the Board dismiss this Petition to Cancel.

This 19th day of August, 2014.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP



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*Attorneys for Registrant
Sterling Jewelers, Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Answer was served on August 19, 2014, by first-class United States Mail, postage prepaid, on:

Bruce W. Baber, Esq.
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Artistry, Ltd.*

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/s/

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Sterling Jewelers, Inc.*