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

Proceeding	92061648
Party	Defendant Epicure Catering, LLC
Correspondence Address	EPICURE CATERING LLC PO BOX 212 OMENA, MI 49674 UNITED STATES
Submission	Answer
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Date	07/16/2015
Attachments	ANSWER.pdf(106837 bytes)

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

In the Matter of Registration No:
4,290,901

For the mark EPICURE CATERING

JERRY'S FAMOUS DELI, INC.

EPICURE WITH LOVE, LLC,

Petitioners,

vs.

EPICURE CATERING, LLC

Respondent.

Cancellation No. 92061648

ANSWER TO PETITION TO CANCEL AND AFFIRMATIVE DEFENSES

Respondent EPICURE CATERING, LLC, through its counsel, for its Answer, hereby responds to each of the grounds set forth in the Petition to Cancel filed on June 9, 2015 and assigned Cancellation No. 92061648, as follows:

1. Respondent lacks knowledge or information sufficient to admit or deny the allegations in ¶1 of the Petition to Cancel.
2. In response to ¶2 of the Petition to Cancel, Respondent admits that Jerry's Famous Deli owns United States (U.S.) Trademark Registration No. 2,754,745 and U.S. Trademark Registration No. 2,787,801.
3. Respondent denies that Jerry's Famous Deli's federal trademark registrations have become incontestable by virtue of long and continuous use, and Respondent lacks knowledge or information sufficient to admit or deny that the registrations of

U.S. Trademark Registration No. 2,754,745 and U.S. Trademark Registration No. 2,787,801 constitute conclusive evidence of the validity of those marks and that Jerry's Famous Deli has exclusive right to use U.S. Trademark Registration No. 2,754,745 and U.S. Trademark Registration No. 2,787,801 in commerce in connection with the goods and services specified therein. Respondent admits that U.S. Trademark Registration No. 2,754,745 and U.S. Trademark Registration No. 2,787,801 list Jerry's Famous Deli as the current owner and that both of these registered trademarks met the requirements of Section 15 of the Trademark Act, 15 U.S.C. § 1065.

4. Respondent denies each and every allegation contained in ¶4 of the Petition to Cancel.

5. Respondent lacks knowledge and information sufficient to admit or deny the allegations in ¶5 of the Petition to Cancel.

6. Respondent lacks knowledge and information sufficient to admit or deny the allegations in ¶6 of the Petition to Cancel.

7. Respondent lacks knowledge and information sufficient to admit or deny the allegations in ¶7 of the Petition to Cancel.

8. Respondent denies each and every allegation contained in ¶8 of the Petition to Cancel.

9. Respondent lacks knowledge and information sufficient to admit or deny the allegations in ¶9 of the Petition to Cancel.

10. Respondent lacks knowledge and information sufficient to admit or deny the allegations in ¶10 of the Petition to Cancel.

11. Respondent admits it is the owner of U.S. Trademark Registration No. 4,290,901 for the mark EPICURE CATERING, which registered on the Principal Register on February 19, 2013.
12. Respondent admits that it's registered mark EPICURE CATERING, Registration No. 4,290,901, ("Respondent's Mark") has been in use in commerce in connection with "services for providing food and drink, namely, serving food and drinks, providing of food and drinks for guests, catering of food and drinks" in International Class 43 since at least as early as March 31, 2003.
13. According to the Trademark Electronic Search System ("TESS") of the United States Patent and Trademark Office ("USPTO"), Respondent admits that Respondent's EPICURE CATERING trademark was cited in Office Actions as likely to cause confusion with the EPICURE WITH LOVE word mark (Serial No. 86219950), the EPICURE WITH LOVE word plus design mark (Serial No. 86219974), the EPICURE WITH LOVE GOURMET CREATION BY SPECIALTY CHEF MICHAEL LOVE word plus design mark (Serial No 86219990), and the EPICURE WITH LOVE word plus design mark (Serial No. 86522313).
14. Respondent denies each and every allegation contained in ¶14 of the Petition to Cancel.
15. Respondent denies each and every allegation contained in ¶15 of the Petition to Cancel.
16. Respondent denies each and every allegation contained in ¶16 of the Petition to Cancel.
17. Respondent denies each and every allegation contained in ¶17 of the Petition

to Cancel

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Petition to Cancel fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The claim set forth in the Petition to Cancel is barred in whole or in part by the doctrine of laches and unclean hands.

Third Affirmative Defense

The claim set forth in the Petition to Cancel is barred in whole or in part by the doctrines of waiver, acquiescence, and estoppel.

Fourth Affirmative Defense

Petitioners have not and will not be damaged by the registration of the EPICURE CATERING trademark and therefore lack standing to petition to cancel the registration.

Fifth Affirmative Defense

Petitioner's mark is not famous within the meaning of Section 43(c) of the Lanham Act, and thus it does not qualify for anti-dilution protection.

Sixth Affirmative Defense

Petitioner's marks are procured by fraud and thus invalid.

Seventh Affirmative Defense

Respondent's mark has a priority date which predates Petitioner's first use date.

Eight Affirmative Defense

Petitioner's marks were abandoned.

WHEREFORE, Respondent requests that the Cancellation be denied.

Respectfully submitted,

TRAVERSE LEGAL, PLC

A handwritten signature in black ink, appearing to be 'ES', enclosed in a light gray rectangular box.

Date: July 16, 2015

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing ***RESPONDENT'S ANSWER TO PETITION TO CANCEL AND AFFIRMATIVE DEFENSES*** which was filed electronically on this date with the TTAB, was made on this 16th day of **JULY, 2015**, by delivering a true and correct copy of same via U.S. First Class Mail postage prepaid, and also via email to the following:

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