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

Proceeding	92062897
Party	Defendant Marco Häußges
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

P.M.I. Trading and Enterprise, Ltd.,

Petitioner,

v.

Cancellation No. 92062897

Marco Hüsges,

Registrant.

**ANSWER TO PETITION FOR CANCELLATION**

Registrant, Marco Hüsges, by and through his undersigned counsel, hereby answers Petitioner's "Petition for Cancellation" (the "Petition") as follows:

In response to the introductory unnumbered paragraph, Marco Hüsges ("Registrant") states that he is a German citizen having an address at Eschenweg 1 A 40667 Meerbusch, Germany, and that he is the owner of Registration No. 4,868,832 for EMOJI in Classes 3, 16, 17, 18, 21, 22, 25, 26, and 27, Registration No. 4,595,110 for EMOJI in Classes 3, 14, and 16, and Registration No. 4,766,492 for EMOJI in Class 27. Registrant is without information sufficient to form a belief to the truth of the remaining allegations of the first, unnumbered paragraph, and therefore denies the same, and leaves Petitioner to its proofs.

1. In response to the contentions of Paragraph 1 of the Petition, Registrant states that Exhibit "A" of the Petition purports to be a page of Petitioner's website, a document that speaks for itself and for which no responsive pleading is required. Registrant is without information sufficient to form a belief to the truth of the remaining contentions of Paragraph 1 of the Petition, and therefore denies the same, and leaves Petitioner to its proofs.

2. Registrant is the owner of Registration Nos. 4,868,832, 4,595,110, and 4,766,492 for the trademark EMOJI as issued by the United States Patent and Trademark Office (“USPTO”) (“the Registrations”).

3. In response to the contentions of Paragraph 3 of the Petition, Registrant’s applications are documents that speak for themselves and for which no responsive pleading is required. To the extent that any responsive pleading is deemed necessary, Registrant states that he has filed with the USPTO applications to register various marks that comprise or include the term EMOJI for various goods and services as further specified in the respective applications.

4. The Registrations were filed pursuant to 15 U.S.C. § 1141(f). All other averments of Paragraph 4 of the Petition are denied.

5. In response to the contentions of Paragraph 5 of the Petition, Registrant licenses rights to use the marks in the Registrations to the Emoji Company. Exhibit B of the Petition purports to be a page of Registrant’s website, a document that speaks for itself and requires no further response. All other averments of Paragraph 5 of the Petition are denied.

6. In response to the contentions of Paragraph 6 of the Petition, Application No. 86/501,625 for “IMOJI and design” in Classes 16, 20, and 28 purports to have been filed by Petitioner (“Petitioner’s Application”), and Petitioner’s Application, including its history of prosecution in the USPTO is a document that speaks for itself and for which no responsive pleading is required. All other averments of Paragraph 6 of the Petition are denied.

7. Admitted.

8. In response to the contentions of Paragraph 8 of the Petition, Registrant states that the file history of Petitioner’s Application is a document that speaks for itself and for which no responsive pleading is required. To the extent that any responsive pleading is deemed necessary,

Registrant states that the file history of Petitioner's Application includes an Office Action dated April 22, 2015 requiring Petitioner to disclaim "emoji". Registrant is without information sufficient to form a belief as to the truth of the other factual averments of Paragraph 8 of the Petition and therefore denies the same and leaves Petitioner to its proofs.

9. In response to the contentions of Paragraph 9 of the Petition, Registrant states that the file history of Petitioner's Application is a document that speaks for itself and for which no responsive pleading is required. All other averments of Paragraph 9 of the Petition are denied.

10. Registrant is without information sufficient to form a belief to the truth of the allegations of Paragraph 10 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

11. Registrant is without information sufficient to form a belief to the truth of the allegations of Paragraph 11 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

12. Registrant is without information sufficient to form a belief to the truth of the allegations of Paragraph 12 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

13. Registrant moves to strike the contentions of Paragraph 13 of the Petition as being irrelevant to any issue that is properly before the U.S. Trademark Trial and Appeal Board. To the extent that Paragraph 13 of the Petition states facts that are relevant to this proceeding and are deemed to require a response, Registrant is without information as to Petitioner's meaning of "threatened PMI" and therefore denies the same and leaves Petitioner to its proofs.

14. Registrant is without information sufficient to form a belief to the truth of the allegations of Paragraph 14 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

15. Paragraph 15 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 15 of the Petition.

16. Registrant is without information sufficient to form a belief to Petitioner's meaning of "universal symbols" and therefore denies the allegations of Paragraph 16 of the Petition and leaves Petitioner to its proofs.

17. Registrant states that Exhibit "E" of the Petition purports to be a copy of The Oxford Dictionary and a document that speaks for itself and for which no other responsive pleading is required. All other averments of Paragraph 17 of the Petition are denied.

18. Registrant states that the term "emoji" derives from a Japanese term (絵文字). Registrant is without information sufficient to form a belief to the truth of the remaining allegations of Paragraph 18 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

19. Registrant states that Exhibit "B", p. 5 of the Petition purports to be a copy of a portion of Registrant's website, a document that speaks for itself and for which no responsive pleading is required. Registrant denies all other averments of Paragraph 19 of the Petition.

20. Registrant states that Exhibit "F" of the Petition purports to be a document titled "UNICODE EMOJI" for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be necessary, Registrant is without information sufficient to

form a belief as to the averments of Paragraph 20 of the Petition and therefore denies the same and leaves Petitioner to his proofs.

21. Registrant states that Exhibit “G” of the Petition purports to be a copy of an article titled “The Emoji Have Won the Battle of Words” for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be necessary, Registrant is without information sufficient to form a belief as to the averments of Paragraph 21 of the Petition and therefore denies the same and leaves Petitioner to his proofs.

22. The responses to Paragraphs 1-21 to the Petition are hereby incorporated and realleged as though fully set forth and repeated herein.

23. Denied.

24. Paragraph 24 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 24 of the Petition and leaves the Petitioner to its proofs.

25. Paragraph 25 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 25 of the Petition and leaves the Petitioner to its proofs.

26. Paragraph 26 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 26 of the Petition and leaves the Petitioner to its proofs.

27. The responses to Paragraphs 1-26 to the Petition are hereby incorporated and realleged as though fully set forth and repeated herein.

28. Denied.

29. Registrant states that Exhibit "B" of the Petition purports to be an image of Registrant's goods and is a document that speaks for itself and for which no responsive pleading is required. To the extent that a responsive pleading is deemed to be necessary, all other averments of Paragraph 29 of the Petition are denied.

30. Denied.

31. Denied.

32. The responses to Paragraphs 1-31 to the Petition are hereby incorporated and realleged as though fully set forth and repeated herein.

33. Paragraph 33 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 33 of the Petition and leaves the Petitioner to its proofs.

34. Denied.

35. Denied.

36. Registrant is without information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Petition, and therefore denies the same and leaves Petitioner to its proofs.

37. Paragraph 37 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required,

Registrant denies the averments of Paragraph 37 of the Petition and leaves the Petitioner to its proofs.

38. Paragraph 38 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 38 of the Petition and leaves the Petitioner to its proofs.

39. In response to the contentions of Paragraph 39 of the Petition, Registrant states that the file history of Registrant's Application No. 79/975,087 in the USPTO is a document that speaks for itself and for which no responsive pleading is required. To the extent that any response is deemed to be necessary, Registrant denies the factual averments of Paragraph 39 of the Petition and leaves Petitioner to its proofs.

40. Paragraph 40 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 40 of the Petition and leaves the Petitioner to its proofs.

41. Paragraph 41 of the Petition states a legal conclusion for which no responsive pleading is required. To the extent that any responsive pleading is deemed to be required, Registrant denies the averments of Paragraph 41 of the Petition and leaves the Petitioner to its proofs.

In response to the unnumbered paragraph that follows Paragraph 41 of the Petition, Registrant denies that the Petition should be sustained, and denies that the Registrations should be cancelled.

## AFFIRMATIVE DEFENSES

In further answer to the Petition for Cancellation, Registrant asserts as separate and affirmative defenses that:

1. The Petition for Cancellation and each paragraph thereof, taken either individually or collectively, fails to support a basis for the relief sought.

2. The Petition for Cancellation fails to state a cause of action upon which relief may be granted in law or equity.

3. Petitioner lacks standing to seek cancellation of the Registrations, or any of them, in that Petitioner is not likely to be damaged or injured by Registrant's use or registration of the marks in the Registrations.

4. Petitioner cannot merit cancellation of the Registrations or any of them because Petitioner has not sufficiently used any mark that is the subject of the Registrations, or any of them, in United States commerce in connection with Petitioner's goods so as to establish exclusive rights therein.

5. Petitioner's unclean hands prevent it from being held to be the prior user of the marks of the Registrations, or any of them, because Petitioner has not engaged in the *bona fide* use of those marks or confusingly similar marks in the ordinary course of business so as to fairly assert recognizable prior rights to those marks in connection with the same or similar goods as are specified in the Registrations.

6. Petitioner is estopped from asserting that the marks of the Registrations, or any of them, when used in connection with Registrant's goods creates a likelihood of confusion with respect to Petitioner's use of the marks in the Registrations either alone or in combination with other terms.

7. Petitioner's contentions in the Petition are or may be barred by waiver and/or acquiescence.

8. Registrant reserves the right to plead any appropriate counterclaims and additional affirmative defenses and to supplement those claims and defenses asserted herein upon discovery of further information and investigation into the Petitioner's claims.

WHEREFORE, Registrant respectfully requests that this Honorable Board:

- (i) dismiss the Petition with prejudice; and
- (ii) afford such other relief as the Board deems appropriate.

This Answer to Petition for Cancellation is being filed electronically. The Commissioner is authorized to draw on the Deposit Account of Cohen & Grigsby, P.C., Account No. 03-2026, if there is any problem with the processing of the electronically submitted fee.

Dated: February 16, 2016.

Respectfully submitted,  
COHEN & GRIGSBY, P.C.

By: /Michael E. Dukes/  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER TO PETITION FOR CANCELLATION related to Cancellation No. 92062897 was mailed on February 16, 2016, first-class postage prepaid, to counsel for Cancellation No. 92062897:

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