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

Proceeding	92064294
Party	Defendant Ninkasi Brewery, LLC
Correspondence Address	NINKASI BREWERY LLC 272 VAN BUREN STREET EUGENE, OR 97402 UNITED STATES
Submission	Answer
Filer's Name	B. Kevin Burgess
Filer's e-mail	kburgess@wrlaw.com, dolson@wrlaw.com, jholmberg@wrlaw.com
Signature	/B. Kevin Burgess/
Date	09/30/2016
Attachments	AnswerFinal093016.pdf(19174 bytes)

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

**Cancellation No. 92064294
Registration No. 4274393**

**EBC Brewery, LLC,
Petitioner**

v.

**Ninkasi Brewery, LLC,
Registrant**

**REGISTRANT’S ANSWER TO PETITIONER’S PETITION FOR
CANCELLATION**

Ninkasi Brewery, LLC (“Registrant”), an Oregon limited liability company, having an address of 155 Blair Blvd., Eugene, Oregon 97402, answers Petitioner’s Petition for Cancellation against Registrant’s mark HELLES BELLES, Registration No. 4274393 (Ninkasi Mark), as follows:

Petitioner and Its HELL’S BELLE Trademark

1. Answering Paragraph 1, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
2. Answering Paragraph 2, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
3. Answering Paragraph 3, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
4. Answering Paragraph 4, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

5. Answering Paragraph 5, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

6. Answering Paragraph 6, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

7. Answering Paragraph 7, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

Registrant and Its Trademark

8. Answering Paragraph 8, Registrant admits the allegations.

9. Answering Paragraph 9, Registrant admits that it is the owner of the Ninkasi Mark, registration number 4,274,393, filed on December 28, 2011, registered on January 15, 2013, covering “beer.” Registrant denies the remainder of the allegations.

10. Answering Paragraph 10, Registrant denies the allegations.

11. Answering Paragraph 11, Registrant denies the allegations.

Likelihood of Confusion

12. Answering Paragraph 12, Registrant admits, denies, or disclaims knowledge of the allegations to the extent previously stated in this Answer.

13. Answering Paragraph 13, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

14. Answering Paragraph 14, Registrant admits that upon information and belief, Petitioner received an Office Action from the Examining Attorney assigned to U.S. Application Serial No. 96943084 wherein the Examining Attorney refused registration based on a likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d) with the Ninkasi Mark. Registrant denies the remainder of the allegations.

15. Answering Paragraph 15, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
16. Answering Paragraph 16, Registrant denies the allegations.
17. Answering Paragraph 17, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
18. Answering Paragraph 18, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
19. Answering Paragraph 19, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.
20. Answering Paragraph 20, Registrant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations.

Deception/False Suggestion of Connection, 15 U.S.C. § 1052(a)

21. Answering Paragraph 21, Registrant admits, denies, or disclaims knowledge of the allegations to the extent previously stated in this Answer.
22. Answering Paragraph 22, Registrant denies the allegations.
23. Answering Paragraph 23, Registrant denies the allegations.

REGISTRANT'S AFFIRMATIVE DEFENSES

First Affirmative Defense: Prior Use

24. Registrant and its predecessors have owned and used the Ninkasi Mark since 2003. "Helles Belles" beer was first brewed and marketed in commerce under that name on or about September 16, 2003. Petitioner is therefore the junior user.

Second Affirmative Defense: Laches

25. Petitioner has unreasonably delayed asserting whatever rights it may have against Registrant. Petitioner had notice of the Ninkasi Mark no later than January 15, 2013, the date of registration. Petitioner filed its Petition for Cancellation on August 24, 2016, a delay of more than three years and seven months. Registrant would suffer economic prejudice if its registration were to be cancelled at this point. Since the date of registration, Registrant has expended extensive financial resources in using the Ninkasi Mark in interstate commerce and building up goodwill for the mark. Registrant requests that the Cancellation be dismissed.

Ninkasi Brewery, LLC
Registrant
By its attorney,

/B. Kevin Burgess/
B. Kevin Burgess
Watkinson Laird Rubenstein, P.C.
101 E. Broadway, Suite 200
Eugene, OR 97401
Phone: 541-484-2277

Dated: September 30, 2016

Certificate of Service

I hereby certify that on September 30, 2016, a copy of the **REGISTRANT'S ANSWER TO PETITIONER'S PETITION TO CANCEL** was served by email and first class U.S. mail, postage prepaid, to the Petitioner at the following address:

Christopher L. Sorey
1094 Mosstree Drive
Apex, North Carolina 27502

chris.sorey@gmail.com

/B. Kevin Burgess/
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