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

Proceeding	92066723
Party	Defendant Restoration Emporium, LLC
Correspondence Address	RESTORATION EMPORIUM LLC 12478 SOUTH ORTEGA DRIVE OLATHE, KS 66062 UNITED STATES Email: efy8@att.net
Submission	Answer
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Date	09/29/2017
Attachments	34T7630 Answer TTAB 92066723.pdf(92245 bytes)

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

RESTORATION HARDWARE, INC., a
Delaware corporation, and

RH US, LLC, a Delaware limited liability
company,

Petitioner,

v.

RESTORATION EMPORIUM, LLC, a
Kansas limited liability company,

Registrant.

Cancellation No. 92066723

Registration No. 4608813

ANSWER AND AFFIRMATIVE DEFENSES TO PETITION FOR CANCELLATION

COMES NOW Registrant Restoration Emporium, LLC, by and through its counsel of record, Sanders Warren Russell & Scheer LLP, and for its answer and affirmative defenses to Petitioners' Petition for Cancellation ("Petition"), alleges and states the following:

1. With respect to the allegations contained in paragraph 1 of the Petition, Registrant admits Petitioner is engaged in the sale of home furnishings, but is without knowledge or information sufficient to form a belief as to the rest of the allegations and therefore denies the same.

2. With respect to the allegations contained in paragraph 2 of the Petition, Registrant is without knowledge or information sufficient to form a belief as to the allegations and therefore denies the same.

3. With respect to the allegations contained in paragraph 3 of the Petition, Registrant admits that petitioner's main website is <RestorationHardware.com>, but is without knowledge or information sufficient to form a belief as to the rest of the allegations and therefore denies the same.

4. With respect to the allegations contained in paragraph 4 of the Petition, Registrant is without knowledge or information sufficient to form a belief as to the allegations and therefore denies the same.

5. With respect to the allegations contained in paragraph 5 of the Petition, Registrant admits the same.

6. With respect to the allegations contained in paragraph 6 of the Petition, Registrant admits the same.

7. With respect to the allegations contained in paragraph 7 of the Petition, Registrant denies filing an application to register its mark on April 8, 2013. Registrant filed such an application on January 13, 2014. Registrant admits the rest of the allegations.

8. With respect to the allegations contained in paragraph 8 of the Petition, Registrant admits that both Petitioner's and Registrant's marks comprise two words, with one of those words being "restoration." Registrant denies the rest of the allegations.

9. With respect to the allegations contained in paragraph 9 of the Petition, Registrant admits that both Petitioner and Registrant engage in the sale of home furnishings. Registrant is without knowledge or information sufficient to form a belief as to the rest of the allegations and therefore denies the same.

10. With respect to the allegations contained in paragraph 10 of the Petition, Registrant admits that its date of first use of the RESTORATION EMPORIUM mark is 2012.

Registrant is without knowledge or information sufficient to form a belief as to the rest of the allegations and therefore denies the same.

11. With respect to the allegations contained in paragraph 11 of the Petition, Registrant denies the same.

12. With respect to the allegations contained in paragraph 12 of the Petition, Registrant denies the same.

AFFIRMATIVE DEFENSES

13. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Registrant's mark and the Petitioner's mark are not confusingly similar. As commonly understood, the marks have vastly different meanings. "Emporium" means "a place of trade" or a "retail outlet." "Emporium." *Merriam-Webster Online Dictionary*. 2017. <https://www.merriam-webster.com/dictionary/emporium> (Sept. 29, 2017). "Hardware" means "ware (such as fittings, cutlery, tools, utensils, or parts of machines) made of metal" or "major items of equipment or their components used for a particular purpose." "Hardware." *Merriam-Webster Online Dictionary*. 2017. <https://www.merriam-webster.com/dictionary/hardware>. (Sept. 29, 2017).

WHEREFORE, having answered Petitioners' Petition, Registrant prays that the Board deny this Petition and sustain the '813 Registration.

Respectfully submitted,

/s/ *Gregg C. Yowell*

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*Attorneys for Registrant Restoration Emporium,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer and Affirmative Defenses to Petition for Cancellation has been served on Michael J. McCue and Aaron D. Johnson by forwarding said copy on September 29, 2017, via United States Mail, postage prepared to: Michael J. McCue and Aaron D. Johnson of Lewis Roca Rothgerber Christie LLP, 4300 Bohannon Drive, Ste. 230, Menlo Park, CA 94025.

/s/ *Gregg C. Yowell*

Attorney