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Filing date: **11/01/2017**

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

|                        |   |
|------------------------|---|
| Proceeding             | 92066858  |
| Party                  | Plaintiff<br>Mr Mark J Shapley  |
| Correspondence Address | MARK J SHAPLEY<br>125 WOODMONT WAY<br>RIDGELAND, MS 39157<br>UNITED STATES<br>Email: markshap@aol.com |
| Submission             | Other Motions/Papers  |
| Filer's Name           | Stephen J. Carmody  |
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| Signature              | /Stephen J. Carmody/  |
| Date                   | 11/01/2017  |
| Attachments            | 02807284.PDF(41676 bytes )  |

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

In the matter of Trademark Registration No.: 3597904  
Filed: September 11, 2017  
For the marks: SHAPLEY’S  
Date Registered: March 31, 2009

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Mark J. Shapley  
(Petitioner)

v.

Cancellation No. 92066858

Koestler, Inc.  
(Registrant)

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**PETITIONER’S RESPONSE TO REGISTRANT’S**

Registrant Koestler, Inc. (“Koestler”) has filed a motion to dismiss the Petition for Cancellation filed by Petitioner Mark J. Shapley (“Shapley”). Shapley does not concede that the arguments raised in Koestler’s motion to dismiss are correct. To expedite this proceeding, however, Shapley has filed, concurrently with this response, an Amended Petition for Cancellation, including Mary B. Shapley and Shapley’s, Inc. as petitioners and clarifying the grounds upon which the cancellation of Registration No. 3597904 for the mark “SHAPLEY’S” in class 43 for “restaurant and bar services” (the “Registration”) is sought. Trademark Board Manual of Procedure (“TBMP”) § 503.03. Shapley therefore submits that Koestler’s motion to dismiss is moot. *Id.*

Dated: November 1, 2017

Respectfully Submitted

**MARK J. SHAPLEY**

By: /s/Stephen J. Carmody  
Stephen J. Carmody  
One of His Attorneys

OF COUNSEL:

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**Certificate of Service**

I certify that on November 1, 2017, I sent an exact copy of this Amended Petition to Cancel to the Trademark Trial and Appeal Board electronically via ESTTA to the United States Patent and Trademark Office, Trademark Trial and Appeal Board; to Michael S. Denniston, Attorney for Applicant, via electronic mail to [mdenniston@bradley.com](mailto:mdenniston@bradley.com) and [bcwilson@bradley.com](mailto:bcwilson@bradley.com) and U.S. Mail to One Federal Place, 1819, Fifth Avenue North, Birmingham, AL 35203.

/s/Stephen J. Carmody

Stephen J. Carmody