

ESTTA Tracking number: **ESTTA889938**

Filing date: **04/13/2018**

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

Proceeding	92067504
Party	Defendant Amazonas Imports, Inc.
Correspondence Address	PAULO A DE ALMEIDA PATEL & ALMEIDA PC 16830 VENTURA BLVD STE 360 ENCINO, CA 91436 UNITED STATES Email: paulo@paiplaw.com, alex@paiplaw.com, nikki@paiplaw.com
Submission	Answer
Filer's Name	Paulo A. de Almeida
Filer's email	Paulo@paiplaw.com
Signature	/Paulo A. de Almeida/
Date	04/13/2018
Attachments	AMAZONAS_Answer to First Amended Combined Petition for Cancellation.pdf(141 194 bytes)

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

Colombina S.A.,)	Cancellation No. 92067504
)	Reg. Nos. 3217914, 3196195, 3198178
Petitioner,)	Mark: AMAZONAS RAINFOREST
)	PRODUCT (& Design)
v.)	
)	
Amazonas Imports, Inc.,)	
)	
)	
Respondent.)	
)	
)	
)	
_____)	

ANSWER

Respondent, Amazona’s Imports, Inc. (“Respondent”), a corporation of California,¹ by its attorneys hereby responds to the allegations set forth in the “First Amended Combined Petition for Cancellation” filed by Colombina S.A. (“Petitioner”), as follows:

1. Respondent denies the allegations set forth in Paragraph 1 of the First Amended Combined Petition for Cancellation.
2. Respondent denies the allegations set forth in Paragraph 2 of the First Amended Combined Petition for Cancellation.
3. Respondent denies the allegations set forth in Paragraph 3 of the First Amended Combined Petition for Cancellation.

¹ Respondent has filed Section 7 Requests to correct its company name. TTABVUE Dkt. Nos. 4-6. Respondent’s correct company name is Amazona’s Imports, Inc. The Board deferred consideration of the Section 7 Requests until final decision or until this case is decided upon summary judgment. Dkt. No. 18.

4. Respondent has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the First Amended Combined Petition for Cancellation, and therefore, denies such allegations.
5. Respondent has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 5 of the First Amended Combined Petition for Cancellation, and therefore, denies such allegations.
6. Respondent admits the truth of the allegations contained in Paragraph 6 of the First Amended Combined Petition for Cancellation.
7. Respondent admits the truth of the allegations contained in Paragraph 7 of the First Amended Combined Petition for Cancellation.
8. Respondent admits the truth of the allegations contained in Paragraph 8 of the First Amended Combined Petition for Cancellation.
9. Respondent denies the allegations set forth in Paragraph 9 of the First Amended Combined Petition for Cancellation.
10. Respondent denies the allegations set forth in Paragraph 10 of the First Amended Combined Petition for Cancellation.
11. Respondent denies the allegations set forth in Paragraph 11 of the First Amended Combined Petition for Cancellation inasmuch as they are confusingly written and unclear. Respondent is Amazona's Imports, Inc., not Amazonas Imports, Inc.
12. Respondent has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 12 of the First Amended Combined Petition for Cancellation, and therefore, denies such allegations.

13. Respondent denies the allegations set forth in Paragraph 13 of the First Amended Combined Petition for Cancellation.
14. Respondent denies the allegations set forth in Paragraph 14 of the First Amended Combined Petition for Cancellation.
15. Respondent denies the allegations set forth in Paragraph 15 of the First Amended Combined Petition for Cancellation.
16. Respondent denies the allegations set forth in Paragraph 16 of the First Amended Combined Petition for Cancellation inasmuch as they are confusingly written and unclear. Respondent is Amazona's Imports, Inc., not Amazonas Imports, Inc.
17. Respondent denies the allegations set forth in Paragraph 17 of the First Amended Combined Petition for Cancellation.
18. Respondent denies the allegations set forth in Paragraph 18 of the First Amended Combined Petition for Cancellation.
19. Respondent denies the allegations set forth in Paragraph 19 of the First Amended Combined Petition for Cancellation.
20. Respondent denies the allegations set forth in Paragraph 20 of the First Amended Combined Petition for Cancellation.
21. Respondent denies the allegations set forth in Paragraph 21 of the First Amended Combined Petition for Cancellation.
22. Respondent denies the allegations set forth in Paragraph 22 of the First Amended Combined Petition for Cancellation.
23. Respondent denies the allegations set forth in Paragraph 23 of the First Amended Combined Petition for Cancellation.

24. Respondent denies the allegations set forth in Paragraph 24 of the First Amended Combined Petition for Cancellation.
25. Respondent denies the allegations set forth in Paragraph 25 of the First Amended Combined Petition for Cancellation.
26. Respondent denies the allegations set forth in Paragraph 26 of the First Amended Combined Petition for Cancellation.
27. Respondent denies the allegations set forth in Paragraph 27 of the First Amended Combined Petition for Cancellation.
28. Respondent denies the allegations set forth in Paragraph 28 of the First Amended Combined Petition for Cancellation.
29. Respondent denies the allegations set forth in Paragraph 29 of the First Amended Combined Petition for Cancellation.
30. Respondent denies the allegations set forth in Paragraph 30 of the First Amended Combined Petition for Cancellation.
31. Respondent denies the allegations set forth in Paragraph 31 of the First Amended Combined Petition for Cancellation.
32. Respondent denies the allegations set forth in Paragraph 32 of the First Amended Combined Petition for Cancellation.
33. Respondent denies the allegations set forth in Paragraph 33 of the First Amended Combined Petition for Cancellation.
34. Respondent denies the allegations set forth in Paragraph 34 of the First Amended Combined Petition for Cancellation.

35. Respondent admits the truth of the allegations contained in Paragraph 35 of the First Amended Combined Petition for Cancellation.
36. Respondent denies the allegations set forth in Paragraph 36 of the First Amended Combined Petition for Cancellation.
37. Respondent denies the allegations set forth in Paragraph 37 of the First Amended Combined Petition for Cancellation.

AFFIRMATIVE DEFENSES

38. As a first affirmative defense, Petitioner's claims are barred by the doctrine of laches. Petitioner had constructive notice of Respondent's registrations, as well as actual notice of Respondent's use and registration of its marks for over ten (10) years, but failed to object. Respondent had no knowledge that anyone would object to its use and registration of its well-established marks, and continued to develop its brand in reliance on the absence of any objection. Petitioner's unreasonable delayed objection has caused material prejudice to Respondent.
39. As a second affirmative defense, Petitioner's claims are barred by the doctrine of estoppel. Petitioner had constructive notice of Respondent's registrations, as well as actual notice of Respondent's use and registration of its marks for over ten (10) years, but failed to object. Respondent had no knowledge that anyone would object to its use and registration of its well-established marks, and continued to develop its brand in reliance on the absence of any objection. As a result, Petitioner is estopped from enforcing any alleged trademark rights against Respondent.
40. As a third affirmative defense, Petitioner's claims are barred by the doctrine of acquiescence. Petitioner had constructive notice of Respondent's registrations, as well as

actual notice of Respondent's use and registration of its marks for over ten (10) years, but failed to object. Respondent had no knowledge that anyone would object to its use and registration of its well-established marks, and continued to develop its brand in reliance on the absence of any objection. Petitioner acquiesced to Respondent's use and registration of its marks and is therefore barred from enforcing any alleged trademark rights against Respondent.

41. As a fourth affirmative defense, Petitioner's claims are barred by the doctrine of waiver. Petitioner had constructive notice of Respondent's registrations, as well as actual notice of Respondent's use and registration of its marks for over ten (10) years, but failed to object. Respondent had no knowledge that anyone would object to its use and registration of its well-established marks, and continued to develop its brand in reliance on the absence of any objection. By failing to object to Respondent's use and registration of its marks, Petitioner knowingly and intentionally relinquished and therefore waived any purported right to enforce its alleged trademarks.
42. As a fifth affirmative defense, Petitioner's claims are barred because Respondent's marks have not interfered with or damaged Petitioner in any manner.
43. As a sixth affirmative defense, Petitioner's false suggestion of a connection claim is barred due to the fact that AMAZON/AMAZONAS and/or a "bird" design does not point uniquely and unmistakably to Petitioner. Numerous third party registrations exist for marks containing AMAZON and/or a "bird" design (or similar formatives) for the goods at issue, and consumers are well accustomed to associating AMAZON and/or "bird" designs with others and not Petitioner.

44. As an seventh affirmative defense, Petitioner’s false suggestion of a connection claim is barred from recovery due to the fact that AMAZON is not of sufficient fame such that consumers would presume a connection between Respondent or Respondent’s marks and Petitioner or its alleged marks.
45. As an eighth affirmative defense, Petitioner’s false suggestion of a connection claim is barred from recovery because Respondent’s marks are not the same as or a close approximation of Petitioner’s alleged marks.
46. As a ninth affirmative defense, the term AMAZON is merely descriptive of Petitioner’s goods and is therefore weak and entitled to a severely narrow scope of protection.

WHEREFORE, Respondent prays that the First Amended Combined Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,

Dated as of: April 13, 2018

By: /Paulo A. de Almeida/

Paulo A. de Almeida
Alex D. Patel
Gregory Kenyota
Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900

Attorneys for Respondent,
Amazona’s Imports, Inc.

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER** has been served on Gary

J. Nelson, counsel for Petitioner, on April 13, 2018, via email to:

pto@lrrc.com, ctoomey@lrrc.com, gnelson@lrrc.com

By: /Paulo A. de Almeida/
Paulo A. de Almeida